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RECROSS EXAMINATION BY MR. HODGES:

If the run occurs before the garment is finished and still on the machine, the run is taken up while on the machine.

RE-REDIRECT EXAMINATION BY MR. WOOSTER:

RR-Q188. Then, when you find a run in a finished garment, you reknit it, after stretching it, without putting it back on the machine? A. Yes. 1460

B[illegible]. Hodges: That is objected to as leading. He said nothing about stretching in his previous answers.

I did say on my direct examination that I had reknit work not on a machine by first stretching it over a needle box and stretching it by gripping it with my knees. After having the work on the needle box, the holding of the needle and the operation of the latch wouldn't differ from the way the needle was held by me and the latch operated when I reknit for Mr. Hodges just now on the machine. 1461

RE-RECROSS EXAMINATAON BY MR. HODGES:

I should say the needle box I referred to was approximately 2½ inches long, 1¼ inches in width and an inch in depth. If it was on plain work, not ribbed, I would put the needle box inside the garment, grasp the garment on the outside, stretch it around the needle box until the loop—cross-threads rather—until the loops—the cross-threads—were stretched over, and I would proceed to close the

1462 dropped stitch by pushing the needle down through the loop, grasping the cross-thread with the hook of the needle, pulling it through; the loop. In so doing, the run would sometimes continue to run further if you didn't get your needle pushed down through the loop. I would not do that before I put it on the box. I would do it afterwards.

In my recent answers I was speaking of goods not ribbed—that is what we call ribbed. Ribbed or plain is our definition. The Gearhart Knitting Ma-
1463 chine Co. was making such goods in 1902. When I went to work—that is, ribbed tops. They have made ribbed tops from 1902 up to the present time. They never made any stockings without ribs that I remember of.

It has been approximately twenty five years since I have repaired runs over a needle box.

The present concern is not manufacturing any knitting machines for the reason that they have approximately five hundred machines in stock since the closing out of the Clearfield Knitting Machine Company. They are manufacturing rug frames and rug loopers for the manufacturers of hooked rugs.

1464 RE-RE-REDIRECT EXAMINATION BY MR. WOOSTER:

The needle boxes haven't varied to any great extent since 1902 when I first became familiar with needle boxes. The needle box here on the table is the same; possibly not exactly the dimensions I gave. I can't recall the exact date of when I last repaired a run over a needle box. It was approximately 1922 or thereabouts.

RE-RE-RECROSS EXAMINATION BY MR. HODGES:

The needle box Mr. Wooster just showed me is made of paper.

Deposition closed.

IRVINE F. MILLER, a witness called on behalf of the defendant, having been first sworn, testified as follows:

DIRECT EXAMINATION BY MR. WOOSTER:

My name is Irvine F. Miller; age 53; residence, 316 West Front Street, Clearfield. I am a printer but at the present time, not working at it. In 1914, I was employed by Kurtz Brothers—from that up until 1925. They were wholesale stationers and printers, manufacturing stationers and printers located at Fourth and Read Streets, Clearfield. 1466

While I was there, we did printing for the Gearhart Knitting Machine Company; we printed instruction books for them. I could identify them if I saw them. That one (indicating Exhibit 30), all we printed was the covers of that. They had some dealings with those people at one time. This isn't a Gearhart cover; it is a special cover. But these were (referring to Exhibits 29, 31 in two parts, and 32). This is the one where they made the change in the cover (referring to Exhibit 32). They used this cover before (referring to Exhibit 31 in two parts), and changed to this cover (referring to Exhibit 32). That wasn't in there (referring to 1467 Exhibit 29); we never printed no foreign language. These three (referring to Exhibits 31 and 32), they started in putting this in here so they would keep track of when they were printed. By "this" I mean this date, when we printed the books; the month we printed the books we put the date in. Prior to this, they didn't have the date in those, and Mr. Gearhart started in dates with those (referring to Exhibits 31 and 32); and this is where he changed the cover on this (referring to Exhibit 31) to this (referring to Exhibit 32). By the changed cove.

I refer to Exhibit 32. The cover was changed to make it more substantial. They found that these covers here didn't stand use, and they put this tag board on there—manila jute—we call them tag board in the trade.

The reason they made the prints at such close dates apart was they only would allow us to print up—Possibly they would give an order for a thousand or maybe for two thousand and he would hold these because he was making changes in the instructions; they were improving their machine
1469 and they were making changes in instructions to the operators. That was the reason that they were printed that way.

Q15. Do you know what Gearhart did with those books after you printed them? A. Why, they sent them out with the machines—ship them out with the machines.

By Mr. Gilligan: Do you know that of your own knowledge?

By the Witness: Seen them in the machines; saw them packing them in the machines; saw the machines over at the express that came back, some of them broken open, and they had
1470 the instruction books in there.

The Gearhart Company always run out of books. Give us the copy one day and expect us to deliver the books the next day, which they didn't get lots of times. But they were pretty near out when they sent the order in, or almost out; be out before we would get the order delivered to them. I couldn't say whether that situation applied to the particular three books of October, 1920, March, 1921, and November 1, 1921, but if the order was in ahead it was contrary to what was always done before, because they were always—In fact, they done that with the greater part of their printing. We done

practically all their printing except lithographs or offset books or something of that nature.

The delivery of those three books to Gearhart relative to the dates printed on them would be—well, this is the month that they gave it to us, but it might have been the last of the month when they had given that order. That's when we received the order on—just the month. It may have been in the middle of the month. It was never over three to four days at the most that they got delivered books from the time that we got our order. This one (indicating Exhibit 31), when we changed the 1472
cover on that, on the last lot that we delivered of these when we changed this cover (indicating Exhibit 32)—not being substantial—Mr. Gearhart got me to get samples of cover stock. I suggested this jute manila tag, which was the best that I knew of for service, and I have ordered that in ahead and I had that in stock, but as to when they got the copy for the inside that I couldn't say, just how soon that was on there. The delivery was absolutely within a month from November 1, 1921.

CROSS EXAMINATION BY MR. GILLIGAN:

These three exhibit books are not all we printed for Gearhart; we printed on up until I left in 1925. 1473
We printed books before then. I think the cover to Exhibit 30 is the one we done at one time during the War. I think they were furnishing these people with machines.

They gave the instruction books. They had them printed. You will find the change in these books is in the heading—Auto Knitter Co., and the other is the Gearhart. We printed the covers and also the inside pages of this Auto Knitter—this is the same form—printed from the same form. We done some printing for the Gearhart people. We never had no dealings with Auto Knitter. It was for the

1474 Gearhart people that we done the printing for; we never had any dealings at all with Auto Knitter Co. We delivered the books which have the name of the Auto Knitter to Gearhart. I never saw that book, Exhibit 35, or the cover. We did not print that.

REDIRECT EXAMINATION BY MR. WOOSTER:

I think we printed the Auto Knitter book cover, Exhibit "30", for the Gearhart people during the
1475 War; I think that was the time those were printed.

RECROSS EXAMINATION BY MR. GILLIGAN:

The date on the cover is 1920; the date we printed the cover was in around there somewheres; I couldn't recall the exact date. The date on them is when they were printed. I think possibly there were earlier ones than that. This does not show there were any printed before 1920.

I wouldn't be able to say just how many instruction books we printed after this last book, Exhibit 32, before I left the company, but a lot of them. I know they increased the orders for them. They were selling a lot of machines, and increased the
1476 orders. Used to get them in one thousand lots and then increased them up to twenty-five hundred. Sometimes there was minor changes in the inside of the instruction books and that was the reason we couldn't go ahead and print them up ahead and had to wait. As I said, they was improving on their machine, and Mr. Gearhart wished us to hold them to the last minute in case there would be anything to change. Sometimes there would be no change; sometimes there'd be a change in the wording here and there.

Exhibit 32 was printed in November, 1921. I wouldn't say how many reprints there were after

1477

that up to 1925. I wouldn't even want to put any figure, because it run up to thousands. I wouldn't know how many different reprints because sometimes there was no change on them and sometimes different changes on them. I really couldn't tell that. I wouldn't have any idea how many prints Kurtz made prior to Exhibit 31. I wouldn't have any way of looking over their records. There were lots of them. These three are all that I can identify with the exception of the cover on Exhibit 30 and perhaps the inside of that book.

1478

RE-REDIRECT EXAMINATION BY MR. WOOSTER:

If Kurtz hasn't destroyed them, they would have a record of when those exhibits 31 and 32 were printed. Now, I just can't tell how far back—when they started the envelope system; but they would have all those in there from the envelope system—they have envelopes for them. I don't know whether they would let me look or give me the information. I will go down there, while you suspend my examination and see what I can find. I will see if they will allow me to go over their records.

1479

(After Recess.)

(After recess, Mr. Miller reported that he had called on Kurtz Bros. and was unable to get in touch with the records previous to 1926.)

In my testimony I have been referring to Mr. Emory J. Gearhart. Mr. Emory J. Gearhart was the man I done all the business with.

Deposition closed.

1480 NOTARY'S CERTIFICATE.

UNITED STATES OF AMERICA,
COMMONWEALTH OF PENNSYLVANIA, } ss.:
COUNTY OF ,

I, Frank G. Smith, a notary public in and for the Commonwealth of Pennsylvania, County of , do hereby certify that the foregoing depositions of Emory J. Gearhart, Roy G. Shaw, and Irvine F. Miller (each of whom resides more than one hundred miles from the place of trial of the above-entitled suit) were taken before me in behalf of the defendant, under order of Hon. John C.
1481 Knox dated February 21, 1930 (as modified by stipulation between the parties dated February 22, 1930, and pursuant to notice and agreement of counsel, at the offices of Messrs. Liveright & Smith, Clearfield, Pennsylvania, commencing at 10:30 o'clock in the forenoon on the 19th day of June, 1930; that said depositions were continued, pursuant to adjournment, on the 20th day of June, 1930, and were concluded on the said 20th day of June, 1930 that each of said witnesses was duly sworn and cautioned by me before the commencement of his testimony to testify the whole truth; that the depositions of said witnesses were taken steno-
1482 graphically, under my supervision and in the presence of counsel for the respective parties, by Augusta P. Boos, who thereafter transcribed said depositions; that each of said witnesses duly read and signed his deposition in my presence.

I further certify that during the taking of said depositions Defendant's Exhibits 18 to 37, inclusive, were offered in evidence on behalf of Defendant and duly marked by me, and that Plaintiff's Exhibits B, C, D, and E were marked by me for identification on behalf of plaintiff.

I further certify that I am not of counsel to either party, nor am I related by blood or marriage to either of them, nor interested directly or indirectly in this cause.

Notary's Certificate. 1483

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this day of , 1930.

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Printed copies of the following United States and foreign patents and publications, were offer in evidence as Defendants' Exhibit I-47:

United States Patents 1484

Hilbert	No.	6,026	Jan.	9, 1849
Carey	"	47,488	Apr.	25, 1865
Fifield	"	51,577	Dec.	19, 1865
Miller	"	71,039	Nov.	19, 1867
Arnold	"	93,394	Aug.	10, 1869
Shedlock	"	113,213	Mar.	28, 1871
Babbitt	"	117,501	Aug.	1, 1871
Harley	"	156,702	Nov.	10, 1874
Salisbury	"	189,500	Apr.	10, 1877
Salisbury	"	189,501	Apr.	10, 1877
Salisbury	"	189,502	Apr.	10, 1877
Stewart	"	312,923	Feb.	24, 1885
Goodman	"	400,330	Mar.	26, 1889
Egly	"	473,697	Apr.	26, 1892
Reuther	"	726,758	Apr.	28, 1903 1485
Woodward	"	757,378	Apr.	12, 1904
Mack	"	914,664	Mar.	9, 1909
Graf	"	916,926	Mar.	30, 1909
Egly	"	956,318	Apr.	26, 1910
Billington	"	1,314,565	Sept.	2, 1919
Ceska	"	1,337,884	Apr.	20, 1920
Fenn	"	1,364,088	Jan.	4, 1921
Wilcomb	"	1,391,033	Sept.	20, 1921
Wilcomb	"	1,398,821	Nov.	29, 1921
Post	"	1,401,728	Dec.	27, 1921
Taft	"	1,461,007	July	3, 1923
Wilcomb	"	1,498,706	June	24, 1924
Semonsen	"	1,536,274	May	5, 1925
Semonsen	"	1,536,275	May	5, 1925

1486 *Foreign Patents*

British	Patent	24,311	of 1893
"	"	19,115	" 1903
"	"	24,464	" 1914
"	"	168,817	" 1921
"	"	180,730	" 1922
German	"	35,795	" 1886
"	"	60,605	" 1892
"	"	125,108	" 1901
"	"	359,064	" 1922
"	"	361,782	" 1922
Austrian	"	424	" 1899
French	"	538,595	" 1922
Swiss	"	77,909	" 1918

1487 *Publications*

Technologie der Wirkerei, English edition, Taf. 24, and text, pages 351-359, inclusive, particularly Figs. 518, 519 and 520, and text under "7. Mending," pages 353 and 354; and together with printed publications heretofore offered in evidence.

(Exception noted to admission of Semonsen patents.)

Certified copy of British patent to Pogson No. 168,817 with certificate of the Commissioner of Patents that a copy was received in the Library of
1488 the United States Patent Office on November 16, 1921, and certified copy showing record of publication in British Patents Journal offered in evidence as Defendants' Exhibits J-48, J-48-A, and J-48-B.

Certified copies with certified translations of foreign patents:

French,	No.	538,585	to Ortega
Swiss,	No.	77,909	to Doring, et al
German,	No.	359,064	to Kleemann
German,	No.	361,782	to Kleemann

German,	No.	125,108	to Schulte	1489
German,	No.	106,861	to Hartig	
German,	No.	35,795	to Foucar	

and certified copy of British publication to Ortega, No. 180,730, received in the Library of the United States Patent Office, July 17, 1922, offered in evidence as one exhibit, Defendants' Exhibit K-49.

Certified photostatic copy of decision of the Comptroller General on March 24, 1922 in the matter of opposition by Ortega to grant of a patent to Pogson, No. 168,817 offered in evidence as Defendants' Exhibit L-50.

Certified copy of file wrapper and contents of 1490
Van Dyke patent No. 1,745,462, offered in evidence as Defendants' Exhibit M-51.

Certified copy of file wrapper and contents of Finch Patent No. 1,674,508, offered in evidence as Defendants' Exhibit N-52.

Certified copy of abandoned application of George H. Slack, filed March 2, 1922, Serial No. 540,630, offered in evidence as Defendants' Exhibit O-53.

Certified copy of file wrapper and contents of Interference No. 48,363 offered in evidence as Defendants' Exhibit P-54.

Certified copy of affidavit of George H. Slack filed under Rule 75, offered in evidence as Defendants' Exhibit Q-55. 1491

Certified copy of abandoned trade-mark application of the Run-Repairer Company, filed March 2, 1922, Serial No. 160,085, for trade-mark "Run-Repairer" for fabric mending implements and fabric repairing goods, offered in evidence as Defendants' Exhibit R-56.

Certificate No. 2,748 by the Clerk of the County of New York of doing business by George H. Slack under the name "The Run Repairer Co., 119 Leonard Street, New York, N. Y.," certificate filed May

1492 *Calvin H. Hartzell. Called by Defendants. Direct.*

26, 1922, offered in evidence as Defendants' Exhibit S-57.

All exhibits previously marked for identification by the Defendants offered in evidence and marked with the same exhibit numbers.

CALVIN H. HARTZELL, a witness on behalf of the defendants, being first duly sworn, testified as follows:

1493 DIRECT EXAMINATION BY MR. WOOSTER:

My age is 57. I reside at 106 North Main Street, Nazareth, Pennsylvania. My occupation is Mill Superintendent of the Kraemer Hosiery Company. I have been connected with that mill for 38 years this coming May, always at Nazareth. I started in as a department foreman, when I came with them. At that time the business was Henry Kraemer's, individually. I have been in my present position about fifteen years. I am familiar with knitting, and have charge, generally, of the knitting equipment in our mill.

1494 Runs occur in goods made in our mill, I have known of runs occurring in goods during manufacture ever since I have been connected with the knitting business. When we got a run, we picked it up. When a small run occurred on the seamless, we used to take it up in the cylinder. A cylinder is the place where the needles are. This exhibit shows such a cylinder. We make a seamless thing on the inside of the cylinder of the ribber or double-knit; this knitting machine is a single needle machine. On the ribber you have double needles and

on the knitting machine, such as this, you have single needles. The ribber is one in which the needles go along in this way and make a rib in the material, as when you have ribbed socks, for instance. That is what you call circle knitting. The only thing that causes a run in the machine is when a needle happens to break. In such case, we pick it up on the inside of the cylinder. The machine shown me was Exhibit A-18.

The Kraemer Company makes full fashioned stockings. They are made on a flat knitting machine and you seam them up and loop them up. 1496
We put the feet on separately, and we loop up the seam. The material Kraemer uses in making hose is silk. They had been making full fashioned hosiery in the Kraemer mill to my knowledge about thirty-four years. I have had something to do with reknitting runs which occurred in manufacture. We used to pick them up with a plain latch needle years ago, before they had invented the fine gauge. The plain latch needle is simply like the needle which is in this cylinder; it is a plain needle with a latch on it. By plain latch needle, I mean the needle having a hook with a pivoted latch for opening and closing the hook. As far as the needle 1497
itself is considered, it is like the needle on Exhibit A-18. I have been reknitting runs with a plain latch needle since I started in the hosiery business. I did it by hand.

I say I have been doing that for the last 34 years.

In those days, we used to hold the fabric to be repaired right over the finger, with a plain latch needle. The run was held on the hand like this here and we hook the needle in this way.

Here is the run. This is the run. In years back we used to take it more like this, here. We started

in with the loop and picked up one after another. We started in with this needle and took a run right along here. Of course, this needle is too coarse. We must catch the stitch and push it into that until it closes this, and then pull it back.

Q59. Now, will you illustrate again with this finer needle on the stocking? A. I am no expert. We used to get that loop first and then go into it this way. Sometimes we would get the first or second loop.

So we could pull the second run of the ladder in
1499 under and through the first loop. And then that would, by degrees, pull the loop up and up, take one loop up after the other.

We have been making 48 gauge stockings since 38 years ago. We started to make 48 gauge seamless in February, 1910. I have a sample of that material. Each of these three pieces produced has a tag thereon, in writing. That is the style number, I guess. That is the 60/2 ply; is combed Sea Island cotton, mercerized. That is the 70-02 combed Sea Island cotton. They are style 48 gauge. Of the notes on the backs of the tags, that is February 3rd, 1910. This one is February 15, 1910, and this
1500 one is February 15, 1910. Those tags are in my own handwriting. Those dates indicate when I made these samples. These samples have since been at my residence.

We did have runs in that goods. First the girls complained that they could not pick them because they were so fine; then I made an improvement on the latch needle to pick them. I have here that latch needle with the improvement.

(Three samples of 48 gauge mercerized goods, produced by the witness, with dated

tags thereon were offered in evidence as Defendants' Exhibit T-58.)

The improvement on that needle is the side guide. Its purpose was to guide the loop so they could pick up faster. The needle produced was made in April, 1910. I fix that date by an old relic here, a note book. I put dimensions down on account of the guide from the hook on down. It is just a certain point where she picked up faster.

The entry states "Needle to pick up stitch for fine gauge seamless, with guide on the right side, 1502
April, 1910, set point 3/30 seconds from highest point of hook." The sketch on the back cover of that book is just a rough sketch like a needle with the latch, and my pointer that I made at that time; that was just for my private use. That is my handwriting. The writing is not so plain now as when it was made originally. It has not been altered; I suppose rubbed by my fingers.

The writing on the tags of the three pieces of mercerized goods is the same as when originally made; blurred a little, I suppose, by handling. No alteration has been made in date or other symbols.

1503

(Needle produced by witness offered in evidence as Defendants' Exhibit U-59.)

I have some matters in the front part of the book pertaining to invention. The book had a lot of things struck off, for instance, in listing the names of people who started on certain dates, and so on. We then started a card system. The figures lengthwise of the page over here are the lengths and weights of those tops; referring to the exhibits just marked; that is 1910. The statement in the

book near the sketch of the latch needle "First operator Hanna Rissmiller" means the first operator of this needle. This was put in at the time I was using the book. The statement "1901 built first singeing machine" is right.

There are some dates in front. They started in front; now they go in the back, but all this stuff was put in in 1910. Those are the weights on the fine gauge when we started on the 48 gauge. We were just starting on the 48 gauge in 1910. These were the style numbers of the different styles from
1505 five up to nine, and that is the weight for each style. That is what made me go to the back of the book. It just came out that way, and later on I put these names in front. These are all style numbers on that fine gauge. That needle belonged to that outfit; that was for the purpose of it.

I put the entries relating to the goods and the reference to the needle and the sketch in as I went along, and made samples, so we had the weights, and so forth. The entries about the weights were made back in the year 1910, when we first went into that 48 gauge seamless. The entries on the last page of the book, and the sketch, and the writings
1506 on the inside back cover were made when I experimented with the first needle in 1910. This entry about the first operator, Hannah Rissmiller, was made around the same time. Miss Rissmiller is not still employed by the Kraemer Company. She got married later on; she died four or five years ago.

(The Hartzell memorandum book, particularly the last five pages and the inside book cover offered in evidence as Defendants' Exhibit V-60.)

The Court: I will let it in as referring to inventor's contemporaneous notes.

Mr. Hodges: Your Honor, we want to put on the record, the general objection to that character of proof of this subject matter. While this is not involved in the issue, at the same time we are interested in our guard claim. We have several claims, you know.

(Marked Defendant's Exhibit V-60.)

The Court: Yes, surely. Of course, I think you always may allow a note book said to be contemporaneous in evidence; you can cross 1508
examine about it. You can shake him, perhaps, but you must let the notes in, because that indicates the attitude of his mind as of that time. It struck me as somewhat grotesque when I first began these cases, but I can see the rationale of it now. I should think it would be all right to have it in, in order to give the witness a perfectly fair chance to explain. If he were a scientist engaged in inventions like those men who work in radio, who keep notebooks and so forth, and have these dislocated entries in notebooks of theirs, in their laboratory experiments, as I have ex- 1509
plained, that would be the subject of much more criticism than in the case of a man who is in a mill and has a book like that for convenience, and just makes notes from time to time. He says he made that note at that time. There are some earlier entries in 1901 and 1902, or 1900, I forget which. I don't know whether he will have to explain all about how that happens, but I should think it would be admissible—anyway, I am going to admit it and you can have your exception and take it

1510 *Calvin H. Hartzell. Called by Defendants. Direct.*

for what it is worth. He has testified to that, and he is under oath, and as far as I can see, he looks like an honest fellow and comes from a good part of the world.

(Exception noted.)

When we got the 48 gauge goods into production in 1910, the girls who had previously mended runs had difficulty with the plain latch needle. They claimed that it was too tight and they could not pick up fast enough. Their objection was with fine
1511 goods that they would skip a loop every once in a while, that it was so fine that they could not see it readily, and therefore would skip one of the loops every now and then as they went along. There were so many threads to the inch on these fine goods. That was before I designed my smaller needle, Exhibit U-59.

On this needle with the guard. I started the girls out on a glass drinking cup. That is to start them out. They would pick it up on a slant with the fingers. We did that by putting that on a glass or egg cup, or whatever we had.

I first started the girls out on a glass jar, about
1512 as big as a drinking glass. It was not one of these preserve jars, it was one of these small candy jars, one with a screw top that clear candies come in. She had the needle in the right hand, and the jar in the left hand. They would usually take the goods right over the top of the jar where the drop is. We would first put the run over the top of the jar, and then she would pick the run up, pick up the stitches with my new needle.

Q128. Can you illustrate to the Court, for example, with Plaintiff's Exhibit 4, how a 48 gauge goods would be mended? I will take a stocking,

Exhibit 5, which has a run in it, for illustration. Now, in giving your description will you, as far as you can, describe each position and motion you make, so that the reporter can write it down? A. I always get mixed up, because I am left-handed.

Q130. Now will you proceed. A. Why, first we take the stocking and put the rip or run over the cup. Of course there would be the run, you know. That will give you the run in here. So they would put that over the cup and pull it around, and then they would take the needle and use it in this manner. They would get your first loop and then 1514
keep on over every other stitch, I mean every stitch in this way. You would get one stitch and come up and get the other stitch, and so on down that way.

Q131. And then after you got to the end of the run with the needle, how was it secured so that the run would not come back again? A. Hold this loose thread, from this last loop, up and put the thread in there, and put it on the inside.

They secure the end of the run when they did it previously with the machine needle, with a run lengthwise of the fabric by tying it in the same way. I have personally known of that way of se- 1515
curing the end of a run after it had been reknitted with the plain needle, since I was a boy 14 years old.

Q135. Where a run happened on a machine, how was it reknitted? A. On the cylinder machine for knitting a seamless type of work, if you only had a short run and had a latch broken, you just pulled it over, caught the same loop and relooped it and started another needle. You picked that up, and ran it on up in that way. If it were a long ways back, you could do it in the same way. That was in

years back; and then later on, they felt that that took too much time, and so all we have to do now is to use this machine we have now and catch the hook in one loop and put it in that and start the machine and that takes it right up, because the old method took too much time. There was too much of a production loss by that other machine.

In taking the piece out of the machine and picking it up by hand, the operation was done with a plain latch needle that was at our place, before I made this one. I have known of that being done
1517 in knitting mills with a plain latch needle since I was a boy 14 years old.

Q140. No, just put the stocking over the egg cup loosely. A. Yes, sir.

Q141. Don't hold it or anything; now, tell us what you next do. A. Take your left hand and pull it down tight (indicating). That is about right.

Q142. Why doesn't that start the run going further? A. This there (indicating)?

Q143. When you pull it down tight over the cup. A. It will if you are not careful, but it won't if you have your run in here (indicating). If it is
1518 that tight, it should not run it down and that is the way the girls used to do it.

We do not pull it tight enough to run the run down. The next thing we do after we get it in position on the cup without starting the run further, we get our needle and catch the first loop. The run is always picked the same way that your knitting machine was running.

Q147. Will you hold the stocking on the egg cup and then hold your needle in the position to reloop the first thread after you have picked up the first loop? A. All right.

After you have done that, then you go down and bring your needle over. Some of the girls would do it just about like this, pretty straight, vertically, I mean, and some were on a slant. By slant I mean the needle is held at one side of the run and at an angle to the level of the goods.

Q151. How does the position at which you hold the needle relative to the run compare with the position at which you hold a pencil in your hand, if you want to write? A. About the same position, just about.

Our mill has not made 48 gauge seamless goods, 1520
continuously since I started in 1910. We are not making any seamless for the last sixteen or seventeen years. We are making 48 gauge full fashioned.

We reknit the runs in 48 gauge full fashioned with the full fashioned latch needle, the latch needle with the slide on, with the bar on.

After I devised this, I kept on using that.

I have made maybe fifty, more or less of these. We used them throughout the plant. I never sold any. I never give them to other plants to use. I do not remember the names of any of the girls who were in my employ during the period since I made this first needle with the side guard and who used 1521
it. I could not remember any more.

First, I showed the girls myself alone, how to use that side guard of Exhibit U-59 needle; I have personally instructed maybe five or six girls since I first started using it. In all that time, I would say maybe twenty or twenty-five girls have used that needle, either instructed by me or someone else, around there. That is, in the period since 1910 to date. There would have been some girls especially assigned to that task.

I conceived the purpose of my guard, when I put that on to be faster picking, more production.

Q171. And does that mean that it would go in between—it is hard to express it—it would go in between a series of lines that you have here—it would be a selective process, so instead of perhaps picking two of the ladders it would go in between your next ladder and the next one further beyond, is that the idea? A. Just one course at a time.

That would have to be laid on its side to do
1523 that. That guard is a separate piece. That is a separate piece stuck in the handle.

Q176. Do you mean to say they hooked it that way and this guard went over in between, over the next one? A. Right in that (indicating).

Q177. Do you understand what I mean, you would have to turn, as you made your downstroke, you would have to turn it so as to bring the guard over the next turn of the ladder, or did you depend on the next motion? A. Yes, you can have a straight motion, so you won't go over on the next wale.

Q178. That is the line you see in the knitting?
1524 You can turn it on the side? A. Yes, we had some girls that had it on the side, but most of the girls that picked the fastest had the guide in front on account of this cross loop.

The quickest method of doing it was by having the hook like that, and the guide going down, and picking it up from time to time. That went in like this and picked it up, and as they came up, they turned it like this. You had to have the needle just like you see it here, and bring the loop up and the loop would pull the latch down. The less you go down, the less you come up.

Q183. I understand all that. What I want to know is, about using the guard. You say your guard is apparently naturally parallel even at this point with the shank of the needle and I was wondering if you did it perfectly straight; if there was anything that would guide the next succeeding run of the ladder unless you had the guard turned over. I just wanted to see what your theory was, the way the guard was used? A. Yes, you just do it like this. That is why I had to have this here (indicating), so the girl would have that turned over. The guard was hooked on—

1526

Q184. The guard was hooked on to the next by the perfect operator so she could connect to the next succeeding ladder by a little twist of the left hand, if she was a right handed operator? A. Yes.

She could put that guard in proper relation to the next thread without rolling the needle in her hand, some did it, and some just had to practice, you know. It was a matter of choice of the operator.

My needle of this exhibit has not been used only on forty-eight gauge goods. It has been applied to full fashioned 33, 39, 36, 48.

Q189. You mentioned a drinking glass that has been used and also an egg cup and also a jar; do you recall any other things you have used for holders with this? A. No, a white egg cup, drinking glass, and those little glass jars.

1527

And when one broke, I would get another.

We had a lady in our employ about 1920 named Miss King at that time. Her name is still King, as far as I know. We had a lady named Rohrback. She is in our employ now. She was first employed by the Kraemer Company in 1920.

Q196. Have you refreshed your memory as to the date? A. The 10th of May, 1920.

1528 *Calvin H. Hartzell. Called by Defendants. Direct.*

I have a paper showing that.

(Document handed to counsel.)

(Statement by President of Kraemer Hosiery Company offered in evidence as Defendants' Exhibit W-61.)

She was employed in town, in a small hosiery mill, the Seamless Hosiery Mill. I employed her for Kraemer & Company, to fill the position examining and mending. I don't know whether she knew anything about mending when I employed her.

1529 After I employed her, I started her out with this needle, and gave her instructions in mending. By "this needle", I mean that style, the style of Exhibit U-59 needle.

She holds the goods the least bit on a slant, if I am not mistaken. At that time we had the egg cup and some girls used the egg cup and then used the glass again. Some preferred the egg cup and some the glass. Some preferred the egg cup because it was smaller and on account of the light. They claimed that the egg cup was better than the glass for that reason. It made a reflection, that glass; that is what some claimed.

1530 There is an advantage in the way they could hold the goods over the egg cup instead of the glass; it is on account of the diameter—if you have a glass where the diameter is too big, they get numb in here (witness points to the back of the hand and in the wrist); that is what they claim—back in the wrist here.

I have seen Mrs. Rohrback reknit goods with my type of exhibit U-59 needle. I guess she was on steady up to some time in 1928, then she got promoted to forelady.

1531

I have heard of the Stelos needle. We got one at the time, sometime in 1928, I guess I just could not say exactly. I had something to do with the Stelos representative. I sent the girl down to Philadelphia. There was a gentleman up before I sent the girl down there.

Someone from the Stelos did come up to see me. He claimed they could get out more production—increase the production. He said that was on account of the magnetic latch, if I am not mistaken.

And then later my company took one for a time.

1532

CROSS EXAMINATION BY MR. HODGES:

XQ223. Mr. Hartzell, will you take the egg cup with the stocking over it and the needle about which you have been testifying and catch the first loop or the loop nearest you again with the needle? A. I am no expert, and this needle is rusty.

XQ224. You say you are not an expert? A. Not any more, no sir. That needle is almost too coarse for this kind of goods; you may catch the wrong loop,—there you are.

XQ225. Now, could you put that on the slide in there, is that position comfortable? A. Yes, sure.

1533

BY THE COURT:

Q227. You could not work it with your left hand, could you? A. No, the guard is on the wrong side.

BY MR. HODGES:

XQ228. Now, you go ahead and do a number of loops, run up several of them. A. I cannot with the left hand, they drop off.

1534 *Calvin H. Hartzell. Called by Defendants. Cross.*

XQ229. Will you just try it with your other hand?

The Court: The guard is on the wrong side, he said.

The Witness: You have to have the guard on the other side, that is my experience, when I first made the needle.

XQ230. Can you take an ordinary needle and demonstrate the way they do it there, the way you did that today? A. I might be able. I did not do
1535 anything like this for some time.

I made the guard originally, the first one for myself. I used it at that time just for practice. I did not put the guard on the left hand side when I made one for myself. At that time I could work it some with my right hand, just to get the idea of the guide up and down.

XQ236. Now, I want to see how you did it, go ahead and do the best you can with several loops in that run, just the way you did it at that time. Do you want that tag taken off? A. No.

XQ237. All right, you have turned that needle around, have you not? A. Yes.

1536 XQ238. You have your hook turned around on the back; you turned your needle back, did you not? A. Just like that (indicating).

XQ239. Take it out and now start that needle the way you did before.

XQ240. Now, will you slowly start it, put it in and begin; let the Court see the position of your hook. Your Honor will notice the hook is turned back toward me. Am I right about that? A. Yes, but I did not do this for a long while.

XQ241. I asked you to do it the way you did it at that time.

XQ242. Here is a plain needle; can you do it with that just the same as you did? A. Yes, sir.

XQ243. You can do it with the left hand; do it with your left hand, if you prefer. A. All right.

XQ244. Wait a minute; hold it, hold it. A. Yes, sir.

Mr. Hodges: Now, your Honor, you see that he has worked it over on what we have called the top. He has pulled it up and pushed it right through there. What I mean is, the hook and latch are all over on the top of this surface. Is that not so? 1538

XQ245. Mr. Hartzell, is that not a fact? A. Well, yes. I just did not catch this.

XQ246. Is that the way you did it? A. No, sir.

XQ247. Why did you do it this way now? A. Well, I have not done it for the last 14 or 15 years.

XQ248. How is it that you did it this other way when you first came in here? A. Well, I just slipped it over on the other side. I pulled it on that way.

XQ249. Go ahead. A. Now it comes right over in this loop, this way. 1539

XQ250. Go ahead. A. Here it is here. The loop is here. It works exactly like a knitting machine.

XQ251. As fast as a knitting machine, I mean the same way that a knitting machine would do it? A. Well, I could not say about that.

BY THE COURT:

XQ252. Can you see this little thing here, this little line? A. I can not see it very well, no, sir.

1540 *Calvin H. Hartzell. Called by Defendants. Cross.*

BY MR. HODGES:

In operating, it was not necessary to watch the goods closely in reknitting the runs after they would get used to it. They would have to when they first started off. I have never reknitted a run so much as I have gone around and saw that the girls reknitted it right. The most interest I ever had in it was when I made that needle. It interested me first. Before that we had the plain latch needle. We used to have a forelady that looked
1541 after that.

XQ256. With the guard, will you show me with Exhibit E-48, can you put that in and show us just exactly the position of the guard on the shank with respect to the cross threads? I want to see the position; do one or two loops.

The Court: You have not been doing this recently.

The Witness: No, sir.

BY THE COURT:

XQ257. Show him how you use your theory of
1542 using the guard. A. You catch the first loop, as I showed it.

XQ258. You caught the first loop in this manner? A. Yes, sir, and put it down there, and ran it through once.

BY MR. HODGES:

XQ259. Stop when you get down with it. A. It it here, it is very hard to say about this. I can not see it very well.

XQ260. Go ahead and show us how you do it. A. You go in and then come right up over the guard. Now, this needle would be down at this time.

XQ261. That is the thread there? A. Yes, sir. You see there is only one there and there should be two of them.

The Court: Do you begin in this manner?
The Witness: Yes, sir.

BY THE COURT:

1544

XQ262. Now, then, you pull the thread up there and then catch the loop, do you? A. Yes, sir.

XQ263. Did you begin using these glasses or egg cups and jars before you made up your needle, Exhibit U.-59, with the guard? Did you use that before with an ordinary latch needle, this arrangement? A. Some of the girls used to use drinking glasses once in a while, but the majority of them used their fingers.

XQ264. How long before, did they use the glass or egg cup or fruit jar? A. You mean before that needle?

XQ265. Yes. A. For a long time. 1545

BY MR. HODGES:

XQ266. Yes; I wanted to ask you some questions about that myself. How long did you use that egg cup or candy jar, or drinking glass, before you used that needle? A. As soon as I got that needle, they used it right along. They claimed they could not use it very easily without it, so we gave them glass jars and egg cups.

They have not used them on up until the present time; we have machines, the Knitbac and the Kayser, for repairing. We put in the Kayser machines sometime in 1930; I could not say what time. We have one at the present time, and we are still using that one. That is the Vanitas machine.

XQ275. Do you mean to say that repairing hosiery as you have described over the egg cup or the glass with a needle having a guard such as you have offered here in evidence, this Exhibit E-48, from 1910 up to 1930 continually? A. Some.

1547 XQ276. What do you mean by some? A. There might be a half a dozen different things that we have used. There is very little done with the needle at the present time.

We used this needle with the guard, until the Knitbac machine was put in in 1929. We had two Stelos needles before that. The Stelos needles were used in the finished goods, runs we found in the finished goods, after they were finished.

Up until the time that we put in the Stelos needles, the operators still used this needle with the guard, of this type, and over an egg cup or glass, from 1910 right through. Some days there may have been seven or eight using it. It would all

1548 depend on how many stockings you had to fix and how many runs you had to fix up in them. For a long time each girl had to finish her own runs in her stockings after she had finished with the goods. The majority continued to do it over their fingers; that was with the plain latch needle. That was away back. We did not have a guard on that needle. They stopped using that over the finger when they started with this needle, stopped it entirely.

The repair department is not confined to one room in the factory. It is not scattered all over

the factory. We have two in the gray work department and in the finished department. There were two departments, in the gray department and in the finished department, and we had the repairing done in both of them. We only have two machines at the present time. The gray department is before the goods are dyed. We have one or two girls, and had one or two girls in there before. It all depended on how much goods we had in production. That was in a public place so that everybody could see it done, outside of the factory, visitors. We did not make a practice of it, of allowing visi- 1550
tors in there; never did. It was not kept secret. I never applied for a patent on this guard. I made two patents on different things but Mr. Kraemer got the patent; that was in his name. The patent was given to Mr. Kraemer. But I made the invention. Those patents were on a cinching device and a device used on the Whiteman machine, and he sold it to the Whiteman Knitting Machine Company.

I have made a sketch of this.

It was my custom to make sketches of these things so that you could make it of the right dimensions. This is what I made the first needle from. 1551
And this is the first needle that I made. We used regular knitting machine needles to make it. It was taken out of our stock. This needle that I have here is the very first one. This is the first needle that I used all the way through. This is the very first needle that I ever made. I have had that needle for many years. And this particular needle was made in 1910. Afterwards I kept it at home. It has not been in use for a long time, not since we went into the full-fashioned hose. After we got into the full-fashioned hose, I made a simi-

lar needle only for a finer thread, therefore I made a finer needle. The same needle; I mean another needle just like this, only finer. I always took a regular machine latch needle in order to make this, and put it in a handle and just put a guard on it. This needle is an American make.

At the time I guess we were using the Torrington needle, which came from the Torrington people, from Torrington, Connecticut. I think this particular needle was made by the Torrington Needle Company of Torrington, Connecticut, to the best of my
1553 knowledge. I know that they were selling us our needles right along at that time, in 1910, because all of the 48 gauge needles were made by the Torrington Needle Company. That is not a 48 gauge needle; that is what we call a 36, if I am not mistaken, a 36 hook.

In Exhibit E-48, that guard is too far back. It has not been used in a long time, and it is not set properly. That guard should be the least bit pushed this way; this way towards the end here. I mean it should extend over towards the side the side the latch is on, this is the way I used to have it. There is a little space, just a tiny space between the guard
1554 and the shank of the needle, in that position. That shows the latch.

Here is the shank of the needle, and the guard that I put on came along close to the side. There was a point where the guard came a little bit past the shank of the needle. So when the thread came through it, it would get caught under this little projection of the guard and slide up under in this manner.

There was a difference between the spread here between the hook and the guard, between the shank of the needle and the guard so that the thread would

be caught under it and then slide between the needle and the guard. You can also do it by rolling the guard. If you move it over, roll it over in the right position, there is a jaw that catches it. You would not need to roll it over. And this would be back up here a little ways.

In regard to the rolling of the needle, if the point of the guard was exactly in line with the shank of the needle, there would not be any way of getting it by the guard unless you rolled it over and put it in the next run in the rolled position; but if you have a slight jaw there, then you get down until 1556
you catch the thread; that is the way I do it.

In other words, that is simply a triangular space between the guard and the needle, with which I can pick up the next succeeding thread of the ladder; then when the instrument or device is operated with the hook forward in this way, that is what I do.

That would catch the thread up under there.

It would catch it on that; push in this way. By the statement, 3/32 of an inch from the point,—I mean to put it down this way. This point should be down here 3/32 from the highest point. My idea was to put the guard 3/32 of an inch from this point here. I call the highest point of the needle 1557
from the top of the hook. The guard should be 3/32 of an inch outside the top of that hook on down. Looking from the inside of the hook, it would be 3/32 of an inch nearer to the handle than the end of the hook. Then your furtherest point of the hook on the outside would be on down 3/32 of an inch from that point. I am using the top of the hook, the hook end of the device with the hook end in a vertical upwards position; that is what I mean.

1558 *Calvin H. Hartzell. Called by Defendants. Cross.*

I mean on the slant of the curve, which is furthest away from the handle.

And that guard comes 3/32 of an inch from that point; that was my original idea. I followed that in making up the later hooks, I still do that, just about the way it is there; that is the way I did. My idea was that it should be 3/32 of an inch away from it, from the outer end of the hook.

This represents about, in other respects this hook is, and in fact the whole needle, a regular model for those which I made later on, and which were used
1559 up until the last time, only with a finer gauge, I had to make them with a sharper point. My guard was more pointed; I ground it down; they would not be exactly alike. As to the shank of the needle which has the hook and the latch and this guard, that should be over in below here. That guard is off. That guard is off and should be back. It is back here. It is flush.

It should not be flush. I always did it this way. I did it so you could bring it over this way. They did the same thing with the Stelos needle. The guard it is thinned out on the upper edge, from the point just back from the end of the latch it began
1560 to thin down here. This is over where the guard begins to thin down to about 1/64 of an inch, as it goes to the end of the latch, where it is pointed. That is so as to work your slide down to this point on account of getting in your loop, and also this is a slender point here. It is tapered down to almost nothing. It was the intention to have its upper edge, the edge right under the latch, it was the custom to have that just a little below the latch with this thinned down; it was on a slant. That was so it would work better. And it lifted the latch.

XQ379. Now will you pull this way and show us just how it works? A. All right.

XQ381. Can you see how I am holding it? A. Yes, sir.

XQ382. Is that fair? A. Yes, sir.

It is the intention, to have that there, I think, so that the loop will release. It seems to me you have one loop in here and the other loop slides over. The latch sticks up a little bit above the guard; that is what I mentioned a little while ago. That guard ought to be on this side of the center more because that loop does not lay on the guard at the present time. It should not come up above the latch when 1562
it is open, like this here. I could not tell whether that is about right. They would have to fix that up. From here you should not see the latch. On the finer guard you do not throw that off. The guard should not be higher than the end of the latch, it should be more like this here, so that the free end of the latch is a little above it.

When our operators got this first stitch, they worked it up and down through the fabric, and some slanting, just by that movement.

We never picked out the loops while the fabric was on the full fashioned machine. I never showed the sketch in the memorandum which I made in 1563
1910 to anyone else at the time I made it in 1910. I knew I was making that needle. The dates 1901 and 1902 on that page were put in there in 1901 and 1902.

I had this memorandum book for ten years before I began making these notes of the engagement of these employees in 1911. I have records in some books older than this one. I have had that book at home all this time, and in 1910 I got it out and made this entry in 1910. I got this book out and

1564 put an entry, April, 1910; I had it in a certain place at that time; I had that book in use at that time, in 1910, from that time on. I had it at home, in a certain place at the house. I really mean that I put those entries 1901 in that year, 1901. And then just a line below that, I put in 1902, in the year 1902; that is the second machine. I went back in the middle of the page and put an entry there 1910. The two entries in 1910 are in my handwriting. That is all in my writing. I wrote 1910, too.

Those three devices are not all of my devices that
1565 I have gotten up; I have some of the full fashioned machines also. Those were from there on, after this time. Up to 1910 those three were the devices that emerged from my experience in the mill. I do not have any notes about the cinching machine and the Wildman ripper. We had a blueprint for the cinching machine and I haven't got those because they were burned up. I don't know just when that was, I might say, about eighteen years ago. I did not have any notes about the Wildman ripper. And the only notes I had about the other thing are just these little notes in here.

I am left handed. I write with my right hand.
1566 I would say that the word "April" and also "1910" were written by the same hand and at the same time.

There would not be enough there if I showed my sketch and the little description to indicate to a man skilled in the art, to make one of those needles. If I would give that sketch to make one, I would make a different sketch. I do not see why anyone should not take what I had written and sketched there and make that. That shows what is the highest point, three thirty-seconds, the arrow points to it. I do not say anything about putting this little pen

knife point down along that line there anywhere. I just said that for my own information. It was not kept privately. I did not show the book or the needle to other people. The book was my personal property that I kept with my personal things and for nobody else to see. I did not show it to other people.

Some pages of these little notebooks I work backwards, according to what I put down there, but not anymore. I use a looseleaf. I have some other books like this, and some I threw away. I could not say how lately they were thrown away. I did not 1568
throw most of such books away in the last twenty years, quite some burned up for me when we had a fire in October, 1908. Some notebooks were in the mill. This one I had at home, on account of that cinching machine.

Mr. Kraemer had quite a law suit about the cinching machine when we first got it, and this note book was used at the time of that law suit, about 1900, I guess. I could not say exactly, it might have been in 1901. I could not have had these other entries there before. The entry of the Wildman ribber was in 1910 when we got this fine gauge type. That is when I made that 48 gauge, that fine gauge.

I remember beginning that book in the front part 1569
before 1910, I took some of those pages out. There was something in the front pages that I tore out. I do not know when I tore them out. I had a list of boys in there, as I put them on, as helpers, in the full fashioned machine. That front part belongs to the full fashioned.

I don't know how many pages are torn out. They were torn out before 1910. These devices lead Mr. Kraemer to advance me in the factory. I tried to keep these things in mind in case anything came up about a raise in position or raise in salary.

1570 *Calvin H. Hartzell. Called by Defendants. Cross.*

Q480. I will just put this to you and see if you can remember; you say you got this book and in 1910, you started first in the back end of it with this that was written acrosswise of the page, were they about the different stockings, and then when you found you had (I am suggesting what you might remember about this thing), when you found you had gotten up this needle and this Wildman ribber, you thought of the different other things you had done and made little notations in this book of the devices you had made up yourself; in other
1571 words, that you did not write these down in 1901 —it would be perfectly extraordinary if you kept this book with the things written in the back for ten years,—but it would not be extraordinary when you started in, and saying to yourself, "I thought of these things that I had done before and made a list of them", do you remember anything about that? Do you still say it was written in 1901 at the time you built the first cinching machine, which was in 1901 and the second machine in 1902, and patented by H. Kraemer, because that looks as if you were talking in the preterite, as we call it,—as if you were talking in the past tense, not in the
1572 present—that you wrote that in after that date, because you say "built it in 1901; second was built in 1902" and it strikes me that there might be some other explanation. You may not remember it, but it seems to me grotesque that you wrote those two things down on that last page and kept the book for ten years or nine years, and then began writing about the stockings in here and then put in about the needle in 1910, below it. That is a rather curious way to do it. It may be possible. I am not saying it is not. I am asking if you can visualize anything or reconstruct your memories. I know

how hard it is about those things. Can you remember anything at all about it? A. I wrote these in, your Honor, in the book.

Q481. I don't doubt that, but when did you write it in the book. This is 1910. There is a date 1901, and another one 1902. A. Yes.

Q482. Did you write that in 1910 or did you write that in 1901? A. I wrote it in. I wrote in 1901—I could not say yes or no. I could not say. It records certain facts in my life at the mill, namely that I did this and built this in one year and another thing in another year. The words "weight 1574
of top" in the book were written at the same time when I put these in. That means these here, weights and tops seamless, that is this thing (indicating). That is written on the back cover and these are written crosswise, the weight of each and every dozen.

There was a leather cover on that at one time. I could not say whether it was torn off or worn off.

In 1910, they put in the fine gauge seamless. That was 48 gauge hook. 48 gauge was much finer than Exhibit U-59. I made this, my first needle, to work in a finer material with a rather coarse hook. I made them finer after that.

I do not know how many rows of stitches to an 1575
inch and a half there would be in 48 gauge seamless hose. I am off on that. We used the American standard of gauges. They used the Wildman ribber for this seamless hosiery in 1910. The Wildman ribber was to make them seamless. 48 gauge full fashioned is different from the seamless. A full fashioned needle is finer; that is the spring beaded needle; the seamless is a latched needle. They are not the same size. The full fashioned is finer for 48 gauge. That is pretty fine hose, but still there

1576 are finer. I could not tell what gauge the Exhibit No. 5 stocking is, except if I had a counter, then I could tell; you have to count the wales crosswise. It is hard to guess at it; that is not very loose, it might be 42. This is mercerized cotton, the heel and sole. These 48 gauge seamless stockings were what are called ribbed, but not a double rib; a cylinder needle makes a single rib and a dial needle makes a double. Dial is the one which works from the inside out, and the other stands right up straight in a straight line. The cylinder needle is
1577 outside. The 48 gauge seamless machines have a dial besides the vertical row of needles. We do not have those in our factory any more.

I do not know where I got this notebook. The company furnished all those books. That was the regular kind that the company furnished.

MRS. JENNIE ROHRBACH, a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WOOSTER:

1578

I reside on Route 1, Nazareth, Pennsylvania; I am 33 years of age; I have lived in Nazareth since I was eight years old; I am employed by the Kraemer Knitting Mills and have been since May 10th, 1920. I have refreshed my memory as to that date by looking at some record. My position when I went with that company was examiner and mending. I was under the instruction of Mr. Hartzell, who has just testified. I was employed by him. Prior to that time I had been employed at a small

hosiery mill, to knit on a cylinder machine. I knew nothing about repairing runs before I went to work for the Kraemer Company. I found out about repairing runs the first day I was with the Kraemer Company. I was instructed by Mr. Hartzell. He gave me a latched needle and a glass I had to drink there, and he showed me how to do it.

In addition to a drinking glass, we sometimes had an egg cup. This needle that I take from my bag is a needle with a little guard at the side; a latched needle with a guard at the side. I have had that particular needle since the day I started. It was 1580
given to me by Mr. Hartzell. It has not changed any from the way it was when he gave it to me except that I bent it and he straightened it out.

Q28. Now, will you proceed to tell the Court what Mr. Hartzell told you to do? A. Yes.

Q29. Are you now making a run or reknitting a run. A. I am reknitting a run.

I am holding my hand like holding a pencil. The needle is in my right hand. My left hand is holding the stocking over the egg cup. My hand is moving up and down. The needle goes through the goods. Years ago I could pick it up faster but I have not been at this steadily. I have been forelady seven or eight years; when we didn't have 1581
much to do I would help out with this. I stopped mending myself, as a regular part of my work in 1928, I think. I haven't done anything hardly at all since. We have been too busy there. I used to do it faster than this but not being at it steadily—

The run is in a position away from me and a little to the left. My hand holding the needle is on the right side of the run. I cannot say in degrees at what angle to the surface of the goods. I am holding the needle. I can still reknit the way I have

been doing, if that angle moves a little bit from one side to the other. I don't think that different operators use different angles. They might. I have tried to hold it at a little different angle but it does not work very well. People hold pencils at different angles; it is just an individual habit.

I did not instruct the other operators after I learned how to do it; Mr. Hartzell did. I have seen the other operators work. They worked about the same way that I have just worked.

I have the goods resting loosely on the egg cup.
1583 My next step is to take hold of it; if pulled hard enough it would extend the run.

Q52. What do you do next? A. You just put the needle in.

Q53. Where? A. Right on the stitch, and you keep that stitch; you catch up the first stitch and keep it.

Q54. And then you work it just as you have stated. A. Yes, sir.

Q55. And then when you get to the end of the run, what do you do? A. Fasten it with a thread.

Q56. Can you say how this is done? A. Yes, I can show you now. You just pull the thread in.
1584 You take two stitches below that, thread it, draw it underneath and start it into it.

As I have just worked it, my needle went down through the goods. It went down far enough to go back up with that stitch; then the latch would close up. It goes this way so that you can get the next loop.

Q60. You never have to get the latch out of the goods? A. Yes, sir, the latch closes up when you pull it.

Q61. And then when you go away up, the loop slips over? A. Yes, sir, and this loop is closed on it, the latch is here.

Q62. The loop has the hook in it? A. Yes, sir. The needle I have here has been in my possession since I first got it. I have had it all the time.

(Needle offered in evidence as Defendants' Exhibit X-62.)

CROSS EXAMINATION BY MR. HODGES:

The needle, Defendants' Exhibit X-62, is the same needle that Mr. Hartzell gave me when I started to work in 1920. I worked at this particular work about four years, from 1920 to 1924. I never en- 1586
tirely stopped using it, but I did not use it quite as much. I did not hardly use it any after 1928. I did not have the time after that, but off and on, I would sneak it out and stick at it for a while. I have always had a place where I kept it; a place where I locked it up. Nobody could get it.

In 1926 and 1929 there may have been a few needles like this used in the factory, but I have not had any occasion to go around to see them. I saw different operators using it, but I would not be able to mention how many. They were the same needles as this one.

The needle, Defendants' Exhibit X-62, has been 1587
in my continuous possession since 1920, the handle and all. I varnished it during that time, when Mr. Hartzell would fix it up. This is the same needle. The guard has not been changed to my knowledge. I do not know if Mr. Hartzell made this needle; he was making them, I guess, because he used to fix them.

I could not say how many people are employed by the Kraemer Hosiery Company; it varies. Years ago, there used to be around 700. That was about

seven or eight years ago. I do not know how many employees they had in the repair department. Mr. Hartzell was superintendent of the whole department. He taught me and the others how to use the needle. I understood he made the needles, but I did not see him make them.

I did not use the Stelos needle; that was in another department in another building where they had the finished stockings. I worked on the gray, before they were dyed. I never did know anything about the Stelos needle. I knew they had the needle
1589 there, but I never paid any attention to it; I did not bother about it. I had one needle myself, and that was all I was interested in.

I did not talk to the girls about it. I did not have anything to do with them. I did not personally know the girl who used the Stelos needle. I had myself timed for a while with this very needle, but I would not be able to state how many inches to the minute I made. I was just timing myself to see how fast I could go.

This hose is not so fine; it is 39. I do not know what the gauge of the needle is; it works all right in this. I cannot use this needle in a fine stocking.
1590 I did not work in the really fine ones. I just worked among the 39's.

XQ118. Now, would you start that again, as you did. Turn it over this way. I notice you turn it over this way; you do that when you start it, and I want to ask you why you do that. A. When I want to get into the stitch.

XQ119. Now, work it just as fast as you can, please. A. That is about as fast as I can, in this position.

The Court: Mrs. Rohrback is illustrating her mending of a run with a needle, her own needle, which has been marked Exhibit X-62.

XQ120. Can you slope your needle down a little bit so that I can see better? A. Yes, sir.

XQ121. You turned the needle over when you started. Why did you do that? A. That is because the latch works also around this way. The latch closes over it. It does not matter how you turn it when you start it. That latch works very easily. This is a latch that works so easy, you have to watch it. 1592

XQ122. Now, will you work a little faster please. A. Yes, I can not do so very well by holding my hand this way. It is not my way of holding it.

XQ123. You are not holding it the way you usually do? A. No, sir.

XQ124. I see. I do not want to interfere with the way you are holding it. A. All right.

XQ125. Why do you go over the top once in a while? Perhaps you are not conscious of it. A. Sometimes you can not always make it do what you want it to do.

XQ126. Now, will you state whether or not, when you go over the top like that, you do so purposely? 1593
A. No, sir. It is my way of holding it. This is a very poor light. I can not see very well here. It is a very poor light and that is what causes it.

Stopping here, the thread is now in the hook. On my downstroke, the loop goes right in between the guard and the latch.

From the start, when I was taught by Mr. Hartzell, since then I have not made any change in operation, or in the mode of operating that needle. He taught me to do it that way and I was not able

1594 to work it very well any other way. I tried on several occasions to work it in a different manner, but it was not much of a success.

I have always done it the same.

From the start, I did not operate over the finger at all with the guard. With the guard I tried it. It would not work. Without a guard I tried it, but it was not with a needle like this. It was with a latch needle that I operated with my finger. I did learn to do this over the finger with a latch needle. We did it right away after I went to work.

1595 When I came in I saw several doing it, and I did it too. That was in 1920. They were still working with the guard and also without the guard as late as nineteen twenty-some.

I do not know how many operators there were.

They were in different departments. I did see them working over the finger but do not know what proportion were working that way. I do not know what needles they were using when working over the finger. It is my idea, however, that they did not have a guard on the needles they were using when they were working over the finger. When they did have a guard they worked over a glass

1596 or something, an egg cup or whatever we could get hold of. They liked the egg cup better.

At first, we just worked on children's stockings. Some were pretty coarse and some were not, and some had small ribs. We were using mercerized cotton.

It did not take me very long to get to where I could work reasonably fast with the needle. When you do it every day, you soon get used to it. I could do pretty good work inside of ten days or two weeks. We could do it right away, but not with any speed.

I worked at the gray goods all the time. I don't know for sure whether the mill had a mending department at that time, in 1921, when I was there. Goods were not sent in from outside to be mended.

In 1920, I was in Department No. 1. I examined and mended. We made the stockings right there, on that floor, and we would examine them and mend them, ready for the feet. If there were any mends to be made in the legs. They were still in the gray. They were not in the machines. They were never in the machines when I handled them.

In operating the needle, I never rolled it back 1598
and forth. I just held it straight, right along and the hook is pushed straight forward. I did move it at a sort of diagonal course to the run.

We had, at times, more than one run to deal with, several runs parallel to each other, but we did not dare fix them when there were as many as five or six. We did not repair more than two runs. If we had more than two, we would either throw them away or use them for re-winders.

I do not know if each floor had a mending and examining department. I do not know how many such departments they had at the Nazareth Mills. They had menders in various places. Right in the beginning I do not know just what they did have. 1599
We have a mending department now, but we did not have it in the beginning. Each department now fixes its own work before it goes into the other department. In the gray department, it was put in for re-winding or something, if it had more than two runs. Sometimes if it was very bad, it was made into waste. It was according to how bad it was. You could not rewind some of it; it was too bad and had to be made into waste. A rewinder takes the silk and puts it back on the spool to use it again, so that it could be reknitted into stockings.

1600 I stopped working the needle in the factory about 1928, but not altogether. I have practiced with it within the last three or four months. I did not want to forget how to use it. I would just get it out and try it from time to time.

I think it was last week that I knew I was going to testify in this case; I believe it was a little longer than that, I cannot tell the exact date. Probably it was a month ago. I was not just asked to practice up; I wanted to refresh myself. I wanted to get it just as well as I could. I do not know how
1601 I happened to be singled out to testify here. I suppose because I was there a long time; I do not know. I am one of the oldest women employees just now, because we have had a strike over there. I have been there right along, since 1920. I stayed in.

CALVIN H. HARTZELL, recalled as a witness for the defendants, testified further:

REDIRECT EXAMINATION BY MR. WOOSTER:

My name is Calvin H. Hartzell and I have testi-
1602 fied before in this case. Mrs. Rohrbach is the woman I referred to in my previous testimony. The needle, Defendants' Exhibit X-62, is one of our 52 gauge, if I am not mistaken. I guess Mrs. Rohrbach got that needle from myself; yes, she got it from me. I gave her a needle when she first started in. That is the only needle I ever gave her. I have no recollection of the needle from its shape, or the shape of the handle, or the color of it, or the particular way it is made, because I made them at that time, in 1920, out of the 52 gauge, all of them.

Calvin H. Hartzell. Recalled. Recross.
Anna Adamcik. Called by Defendants. Direct.

RECROSS EXAMINATION BY MR. HODGES:

The 52 gauge needle was in 1920; I do not have any date on there. The handles did not come with the needles when I got them; I put them in a handle myself, the needle and the guard. I furnished Mrs. Rohrbach and all the other operators with needles. I did not teach all the operators how to use the needle. I taught one in each of the departments, some times more. This needle is not a Torrington needle. I guess this is made from a needle I got from E. W. Jasper in New York City. He is still selling full fashioned needles. This needle was made for full fashioned work, and seamless and the fine gauge seamless. It can be used up to 48 gauge, when it is finished. The needle works just about the same in bigger gauge material as in the small gauge. It works about the same, regardless of the gauge.

(Adjourned to Thursday, March 26, 1931, at 10:30 A. M.)

ANNA ADAMCIK, a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WOOSTER:

My name is Anna Adamcik. I am 24 years of age and reside at 329 East 69th Street. I am a demonstrator and instructress for the Julius Kayser Motor Mend, whose place of business is 40 East 34th Street. I mean the Kayser Motor Mend Cor-

poration. The name is not the Julius Kayser Motor Mend, it is the Kayser Motor Mend. I was also employed by the Hosiery Motor Mend Corporation at the same place. When the Kayser Hosiery Motor Mend Corporation took the business over I continued with them.

My position with the Hosiery Motor-Mend Corporation was demonstrator and instructress, also I worked for the Hosiery Motor-Mend Corporation ever since they took it over from the Vanitas people. In my work, I have used the Vanitas machine or
1607 the Motor-Mend machine which is now the Kayser Motor-Mend. This is a Vanitas machine rigged up before me. I also have before me an aluminum cup. I stretch my stocking over the cup; then I take my needle and insert it a few stitches below the run to put my needle inside of the fabric. When stretching it first, the run will not stretch out more because the needle is inserted in the loop of the stocking. I hold my stocking loose over the cup then insert my needle in the loop and stop it from running further; then I push my needle up to have my stitch ready. I start the motor and the motor carries it up. The motor is stopped by pressing the control in my finger tips. My needle is holding that
1608 stitch. I have got to have the top of my stocking this way. I have to do that so that when I press the pedal, the motor will take my needle up. Now, I have just pressed it. I now move my stocking down again. Now, I have my needle up to that point in the run. I can stop it with my foot.

(The Vanitas machine was offered in evidence as Defendants' Exhibit Y-63.)

(The cup was offered in evidence as Defendants' Exhibit Z-64.)

I cannot insert my needle in the last stitch of a run. I have to follow a few stitches down and get my needle in the loop. That brings the hook underneath the goods. I am now holding my hand on the needle in line with the run in the position ready to reloop. That is the way I teach them to hold the needle straight in line with the run. You can hold it a little to the side but you can do it nicer and make the run more even, and then I do not have to stiletto it and tear the stocking. If I hold the needle too much on the side it leaves a bigger ridge than when I hold it straight.

1610

I have operated the Vanitas machine with that type of needle in line with the run the way I first did ever since I got our first needle. I know how that needle is constructed. It is a needle with a long hook and a sliding tube inside of it. It has no latch; it has a sliding tube. There is a notch that opens and closes the hook.

When I insert my needle below the fabric, the stitch I already had, slipped into the notch, and as I bring my needle up, the next thread slips through the loop that I had caught in the notch. I pull it with the loop through the hook. The machine does that.

1611

This is not the real Finch needle; this is an improved needle. I have a Finch needle. They both slide alike, but the other one is open. The new needle is open because we can clean them easier when they are open. I mean that the Finch needle is straight from the notch down. There is no opening here and the improved needle has an opening here (indicating). That is all there is. The advantage of the opening is cleaning. When you are using the needle all day, some of the lint from the stockings clogs in the tube and stops it from running, or it sticks.

I have with me a hand needle with a springy hook and a pivoted latch open and closed on the hook.

Mr. Wooster: The needle produced by the witness is similar to that described in the patent to Carey, 47,488 of 1865, a spring bearded needle and shank, h, a spring beard k and pivoted latch i.

Q57. Will you knit a run by hand with this Carey needle and tell us what you do? A. I insert my
1613 needle a few stitches below the loop, through the fabric, then stretch my stocking over the cup tightly.

That makes the run come back to meet my needle. Then I bring my needle up. I have my loop and I keep that operation straight in line with the run. I can also work that by holding the needle off to the side the way I hold a pencil. I can work it on a straight line or to the side. The latch of the needle is opened by the next thread. The next thread, as it is inserted through the fabric opens the latch as it comes up. The thread presses the spring. After the thread has slid off the latch the spring of the hook tends to throw the latch back.

1614

(The witness was shown a holder with a ring, made taller than in the Graf patent No. 916,926).

Q65. You just laid the cloth over the end of that shorter holder, then you put your needle in, then you sprung the ring down to hold it, did you not? A. To stretch my stocking.

I can reknit it with the Vanitas machine (demonstrating). It is now closer. I do not have to have

the ring on it; if I want to slip it faster, I do not use it. This is just a little egg cup, a low one. It is not as good as a high one, one which I can control with my hand. The ring helps to hold a stocking over. I can stretch the ring and hold the ring. It does not tire my fingers so much (demonstrating). The pressure changes as I slip it along with my hand. The pressure change is a very slight one.

(The spring beard pivoted latch according to Carey Patent No. 47,488 of the year 1865, was offered in evidence as Defendants' Exhibit AA.) 1616

(The long and short holders as models of Graf Patent No. 916,926 of the year 1901, were offered in evidence as Defendants' Exhibit BB.)

I can reloop with an ordinary pivoted latch needle. I can do it with Defendants' Exhibit B-40. I can do it both on the holder of the Vanitas machine and on the Graf holders the same way.

Using Defendants' Exhibit B-40, I insert my needle a few stitches below the loop. Then I push through the fabric until my latch goes beneath the next thread. Then I draw it up and keep doing the same. I hold the needle a little bit off to the side, so the latch will not catch more than two threads. I also have the diagonal of the rectangle for the latch to go through. That is a longer distance, longer than the distance from one cross thread to the next one. The cross threads are closer together than the width of the run, if you hold the needle on the side. If you hold it over this way, you get more room; they would not be closer if you hold it over this way. When a run is stretched ready to 1617

reloop the width of the run is a great deal wider than the space from one cross thread to the next, so if I hold the pivoted latch needle off at an angle, I have as much space as I can get for the latch to go through there. I can only pick up one more thread that way. If I hold it straight, I am likely to catch the second thread instead of the first one, that is, with the pivoted latch needle.

CROSS EXAMINATION BY MR. GILLIGAN:

1619 I have been with the Kayser Motor-Mend Corporation since they took over the Hosiery Motor-Mend Corporation and I was with the Vanitas Company before that. I have used the pivoted latch needle. I had lots of trouble with the pivoted latch needle but I did learn to work it, but not successfully; it was not the same kind of trouble I had here this morning. I have never learned to use the Stelos needle and operate it according to the Stelos method but I have tried the Stelos needles. I think this cup I have been working with is a very suitable holder for my work.

XQ97. Now, Miss Adamcik, suppose we do this again. Do this the Vanitas way. Before you be-
1620 gin, I want his Honor to be able to observe you so that he can watch the process. A. All right.

XQ98. Now, will you get your run? A. All right.

XQ99. You can make another one, if you want to. A. Yes, I do.

XQ100. What are you doing now? A. Inserting my needle a few stitches below the loop. I put my needle in through the fabric. I stretch my stocking tightly, so that the loop runs through the needle, and as I push the needle through, it catches on the notch. Then I draw it up. That brings the next

thread through the loop. I now have it ready to step on the pedal. I now start the motor.

XQ101. Go ahead two or three more times. A. All right.

XQ102. You always take one or two stitches by hand, before you start the motor? A. Yes, sir.

XQ103. You always take one—you take two or three? A. One or two stitches, so as to get it right above the surface so that the needle will draw through the fabric.

XQ104. I notice that occasionally you are using it just a little off to the side. A. Yes, sir.

1622

XQ105. Does it matter whether it is going straight in or not? A. It does better work when you are putting it in, in a straight line with the run.

XQ106. But sometimes they do work it off at the side? A. Some girls have a tendency to put it over to one side, and it slips off easier.

XQ107. Will you go to the end of that run and show his Honor just how you close the run?

XQ108. Will you not go ahead and do that? A. All right.

XQ109. You are now using it a trifle off parallel now. A. Just slightly.

1623

I come to the top and take this needle out. I then take just an ordinary sewing needle and thread and weave it together up there. That is where it was broken and where the run started. This is just a single run. Sometimes we have a double run, and sometimes three. If we had a double one, we would baste it around so that it would hold.

When we get a stocking to repair, before we put it on the machine, we first look at the place where the run started. And then I decide whether to begin in two directions and start by hand. Then I

put some threads around the hole to hold the various loops in position while I mend the run, to stop the run from running further. Then we bring up the first and loop it over that there. Then the second, and loop it over that in this same way. Then the next one, and then I take the needle and thread and weave it together by hand. We do not finish a run with the same needle. On a long run in the center of the hose, we would make a flawless mend. Then we just use the same thread in the stocking and weave it together so that it does not show.

1625 Now we take the same needle and finish it up to the very last stitch. We do it with the same needle by machinery, and do the last few stitches by hand with the same needle in the machine.

At the end of the run, I am involved in the use of the needle by hand.

I am going to run it up here. Now, I have it up here all right, and the last two or three stitches I did by hand. I must do that by hand. I took the last two or three stitches by hand.

I have to watch this closely so I can get the very last loop that is on the last broken thread. Then I have to bring my thread over the two loops. I

1626 turn my stocking around and get my second on this side. It does not slip when I hold it in line. It slips when I hold it out of line; that is when it seems to slip more. I am taking my stitch now, holding that needle off to one side. Of course I have to manipulate the thing to pick up the length of it. I hold it off to one side now. You have to hold it this way to get it up there. This takes very close observation. Gradually that hole is getting smaller. Then before I get to the hole, I take two or three stitches by hand. I do it without the power. I do not use the power in this, but I use the same needle.

I put the power off and on by hand, at that point.

When working with the power I do not do it in the same way I would if I were doing it by hand. The power does it and I just hold my hand still, and hold it in position. I am doing it the same way I would do it by hand, only the power is supplying the movement of the needle up and down. The power simply relieves me from this up and down motion of the hand. It gives me that same motion.

Now, these two last stitches are rather difficult. 1628
I take the very last one; I take that one that is next to it up there. This is very close. That last loop there is somewhat tight. Let us get that clear and let's bring it down here or it is going to break. I take my last two stitches on this side. This can be done by hand also. I use the needle. That can be done with a separate needle and thread.

I never did use the Finch hand needle in doing this work. I do not have any use for it. I can do it. Sometimes I did use a Finch hand needle in teaching the girls how to work. When they use that type of holder, a Finch hand needle, then they have a tendency to hold it over this way, and it 1629
makes it hard for them to learn. I mean when they hold it on this power control.

One of the Finch hand needles goes with each of these machines to start the girls off by hand. They operate by hand in finishing the run, but they do not have to do it by hand.

You cannot tell from Exhibit No. 30 whether that is a fair representation of the way the girls work. They are not supposed to work the Vanitas system that way. The right way would be to hold it straight in line with the run. Some of the girls

switch their machine every way, and that is the way it helps them, they believe. Some of the girls hold it just about the way you hold a pen or pencil. You cannot tell from the photograph, the direction of the runs they are dealing with, and that is why I say that probably they have the cup turned differently. The needle of the young lady toward the window may be held in such a way that she is working to the side, but still her needle is in line with the run. Some times you get tired of holding it one way and they just change and hold it to the
1631 side. It flops very easily, because the needle is straight. They do it to rest their hand, even if it slips.

XQ169. This spring latch needle that you used—I don't know that I will ask you to use it over again, you were not able to use that very well, you dropped every three or four stitches, did you not? A. That is not very good. I have a different latched needle. If you want me to use another one, I will.

XQ170. I would like you to do this with this holder, Defendants' Exhibit BB, make about three short runs and then do those runs over that holder. A. Do you want a ring on there or just as it is?

1632 XQ171. I want you to do it the Graf way with a ring around it. A. All right, three runs?

XQ172. Three short runs. (Demonstrating.)

XQ173. Have you got three runs? A. I have got three runs.

The Witness: With this needle?

XQ174. Yes, with your needle, just the way you did with the Vanitas method. A. Do you want me to change it?

XQ175. I want you to do it just the way you would do it if you were doing it regularly. A. All right, I will do it.

(Whereupon the witness demonstrated.)

XQ176. That is a pretty tedious kind of thing, isn't it? A. This is not for commercial use. It is all right to do it. I can take the ring off and do it just as I would with an egg cup.

XQ177. You would not do that all day long with the ring on, it would be rather tedious, would it not? A. No, I wouldn't if I was working on piece work. 1634

(Witness continues to demonstrate.)

That holder with the ring on it doesn't stretch the goods. I did not hold it still, so it did not stretch it as good as at other times. I am not used to this. It can be done. It does the same thing as the Vanitas system if you are used to it. I am not used to it. I can get used to anything if I have to do it.

REDIRECT EXAMINATION BY MR. WOOSTER: 1635

When testifying about the sliding latch needle with the Vanitas machine, I said that in working that machine the power automatically brings up a stitch. I do not push the needle forward up the run. It goes automatically up to the ridge.

I tried a pivoted latch needle when I first started working for the Vanitas Company. It climbed automatically up the run like that but then it would get caught and twisted. You had to hold it a little.

1636 *Glenn Hitchcock. Called by Defendants. Direct.*

I went to Washington to demonstrate the Vanitas machine with the Finch sliding needle to the Examiner in the Patent Office, and met Mr. Orton in his Washington office and showed him the Finch needle operating in the Vanitas machine, and he called the Examiner and he watched it and he also wanted to try how to do it. He said I done it so easily he wanted to see whether he could do it so I let him have the needle. I stepped on the pedal and let him pull the needle. He did not even move his hand and it climbed up the ladder.

1637 The patent application was in the name of the inventor, Mr. Van Dyke, of Chattanooga, Tennessee. I went there for Mr. Van Dyke. I had to go and prove just what it did. I went to the Patent Office two or three times to show this invention to the Patent Office people. That is, to show this machine with the needle in it that I demonstrated here today.

GLENN HITCHCOCK, a witness on behalf of the defendants, being first duly sworn, testified as follows:

1638

DIRECT EXAMINATION BY MR. WOOSTER:

My name is Glenn Hitchcock. I am 30 years of age and reside at 12 Oakwood Boulevard, Hudson, New York, and am foreman in the knitting department for Thermo Mills. That mill makes knitted sport coat goods, and toy coating, of wool yarns. I have been connected with that mill for about fifteen and a half years. I am foreman now; five years previously I was assistant foreman; a couple of years before that, a fixer on knitting

machines; the rest of the time I was just an operator on their machines.

We use the Tompkins Spring Beard machines at that mill. I think I have a picture of them. This is the picture I referred to. In this picture we are knitting tubular, or circular goods. As the goods are knitted they go up or are rolled up under tension. I have been familiar with this type of machine ever since I worked for the company, which was sometime in March, 1916. I have a letter from the company.

(Letter by the Treasurer of the Thermo Mills 1640
Company, offered in evidence as Defendants' Exhibit CC.)

(Photograph offered in evidence as Defendants' Exhibit DD.)

I did not work on this Tompkins machine for about six months after I was employed by the Thermo mills. Then I worked on it right up to now. I was operating on them for about five years; then I went n as fixer and assistant foreman, and now I am foreman of the mill.

Runs happen in the goods made by the mill. A broken needle, or a drop stitch would cause a run 1641
to happen while the goods were in the machine; different things will cause a run or drop stitch on any machine. Spring beard needles are somewhat subject to breakage; that is due to the metal crystallizing, also to the wear of the devices which open and close the beard and the waste or something like that, or a thick knot. A run, in my experience is not an unusual or remote thing. When a run did happen, you catch the drop stitch up with a pivoted latch needle; I have some here. These needles are used in our mill in the operations.

1642 *Glenn Hitchcock. Called by Defendants. Direct.*

We have about twenty cylinders on this type of Tompkins machine and we have about sixty that use latch needles. In the cylinder machines that use pivoted latch needles, the finished goods comes down, somewhat in the way it does in the small hand machine, Exhibit A-18.

The runs would not be very long; if we have one that was three inches, it would be a long run. I did not bring a Tompkins machine here. It is a very large machine. I have a model on which I can demonstrate the angle of the goods, where the
1643 run starts and how it is knitted up, the model is a hoop, a mounted embroidery hoop.

I have a piece of goods mounted in the embroidery hoop at an angle of 75 or 80 degrees which is approximately the angle of the tubular goods shown in the exhibit picture. There is tension on that tube of goods; it is very tight. There is a take-up that controls the tightness here.

Q45. As you have the goods on the model, which is the outside and which is the inside of the goods? A. This is the outside; this is the right side of the goods; this is the inside. This is inside—this is knitted inside out.

Q46. This is a ribbed goods? A. Yes, sir.

1644 Q47. Now, when you reloop runs with a pivoted latch needle, on which side do you reloop? A. If the needle is down here, we would work one of the needles up about like this. This is simply a section of the needles. We go up one of the needles here and catch it up a piece and then catch it down here and hook it down on a new needle. If we do not do that, we would simply catch the needle in here or it would drop it off.

After the needle broke, we would put a new needle in it here, and then hook this goods back

over it, in order that when you get down to the last stitch, you could hook it over the needle. We would go up one of the needles here and catch it up a piece, and then catch it on down to where the needle had broken and where it had dropped off of it. Then we would attach it to the new needle which we would insert. We go into the loops on the proper side first. You need to get the loops on the proper side first. We need to get the loops on the proper side, that is the reason we go in this way.

After a needle is broken, then we would put a new one in it. 1646

Q55. There is a right and wrong side of these goods and the loops want to go on the right side? A. It is according to what side the loops come in on.

By the right side, I do not necessarily mean the side where the loops would show on. This thing goes in this direction. This is on the right side and this is the back side. As we have it here it is inside out. The loops want to go on the right side of the cloth; but they would not have to go on the right side. It would not necessarily follow that the loops would go on the side where they would show. That is done by the things doing in 1647 different directions. As I have the goods on the model, this is the wrong side of the cloth. That is the outside of the tubes in the figure. That side is the side that you would see in the picture, this side here.

Q62. Will you show us how the loops were rehitted? A. Yes, sir.

Q63. Can you say as you go along, what you are doing? A. I catch that latch needle on this last stitch.

1648 *Glenn Hitchcock. Called by Defendants. Direct.*

Q64. And is that on what corresponds to the inside of the tube in the picture? A. Yes, sir.

Q65. What have you done now? A. We have got the latch needle in the last stitch.

Q66. On the hook? A. Yes, sir.

Q67. And the hook sticking up there? A. Yes, sir, all the way through.

Q68. And away from the plane of the goods; is that right? A. Yes, sir.

Q69. What do you do next? A. Bring the latch under there and catch the first stitch and pull it
1649 all the way through.

Q70. So that it would catch over here? A. Yes, sir.

BY THE COURT:

Q71. The end of the needle is here? A. Yes, sir.

BY MR. WOOSTER:

Q72. You are coming back? A. All the way out, catching the next one.

Q73. When you came back, what opened the latch? A. The stitch. The old stitch that was on
1650 the latch.

We do not have runs to reknit after the goods were out of the machine. That did not happen in our mill. When they happened they happened on the machine and we knit them up on the machine. I have known of that being done in our mill some time between 10 and 15 years ago; I would say, maybe 12 years. That way of doing it was taught to me. And I have taught others. And we have a number of people that are doing that today in our mill, every machine operator.

The angle at which the needle goes back and forth through the goods, depends on the knitter. They usually hold it a little different.

On a knitting machine the needle would come down here (indicating on the machine) and then it would have to go out over the latch there. That is not very good work there.

In this little model I do not have the right tension to hold the fabric in the proper position. I have to hold it up there; that is the way it is done.

Q86. Now, how is the fastening made at this time? A. Well, I catch that last stitch; when I 1652
catch that I will be all right.

Q89. You just have room to come up there? A. Yes, sir.

Q90. Do you have to take this time to put the hook in and catch the last loop? A. Yes, sir; in some cases we have to do it this way. The knitters do not do that. That is just the way the knitter has it coming to him to fasten.

Q91. You have gone back of that with the hook to put the hook in and catch the last loop? A. Yes, sir. They would not do that on a regular machine.

Q92. In an actual machine, would you have your fingers back of the goods, or where would you have 1653
them? A. No, you would not have them there.

Q94. You use quite a long shank needle? A. Yes, sir.

BY THE COURT:

Q95. And then it comes right on up after that to this point here? A. Yes, sir. This is very easy after you get that first loop in the proper place. On the machine you can catch the loop very easily.

1654 *Glenn Hitchcock. Called by Defendants. Cross.*

(The stand with the hoop and the piece of knitted goods fixed on it was offered in evidence as Defendant's Exhibit EE.)

CROSS EXAMINATION BY MR. HODGES:

I started using this contrivance which I have here on the desk, today. This is just here today for this special purpose. That is not our regular means of relooping the runs. When the cloth is on the machine, it is stretched even tighter than
1655 that. And this is just for illustrative purposes. I can work even faster with these runs in their regular position. I cannot work so fast here with these runs in their awkward position. It works very fast after you catch that loop in there. This is woolen goods.

We catch the last run out and work down through the needles, in the cylinders, the regular machine.

(The hand device with the piece of goods on the model and the spring beard needles and the long shank pivoted latch needle hooked in the goods was offered in evidence as Defend-
1656 ants' Exhibit FF.)

The Defendants' Exhibit FF on which I was illustrating is just an illustrative device; it is just a small portion of the needles.

XQ107. Is the needle stand as illustrated in this exhibit, the way that the needles stand in operation? Do they stand as they do here at present, is that one of their positions? A. It stands perfectly straight.

XQ108. The needle in the goods? A. Yes, sir. It is right in parallel with the goods, I would

say. This is due to the awkward position of getting up under the goods.

A three inch run would be rather unusual in this type of goods. It is usually merely two or three loops.

BY THE COURT:

XQ113. These needles have to be very nearly parallel to the goods as you do it, are you working on the surface of the goods or sticking it through the goods? A. Coming from the bottom is more like this. That is the position of the needle in the 1658
cloth; the cloth is at a little bit of an agle, and it works down.

XQ114. Right in the surface of the goods? A. More or less.

BY MR. HODGES:

XQ115. More or less on the surface of the goods? A. Yes, sir.

The reason is that there is no chance of getting your hand in behind the goods in these machines.

There is a circular ring behind this roll of goods, this tubular roll of goods. There is nothing down 1659
here. And we worked through the goods when we are picking it up on the machine, providing we would have a drop stitch in the goods which was not caused by the stop motion, and ran up here. Then we have to go through the cloth, in this manner. We are inside here, about inside here in this manner. You have to do it this way. (Whereupon the witness demonstrates.) The rib, I would say, does not make much difference. After the thing is finished, you can not tell the difference, whether

it was inside or out. I am not familiar with hosiery. This fabric is made on one side of the needles; it is made over this way. It is made on one set of needles. We call a fabric made on two sets of needles, with one set of needles passing through another set rib work. Some call this rib work, and some call it flat work, flat knitting, this stuff here. Flat is used to point out the difference between the ribbed fabric. We can work it through the goods when we are picking it up on the machine. If we are up here, about this point, we
1661 would. As I have that in the model, I say that is permanently stretched now that the band was around it.

XQ136. Will you tell us just exactly what you do in restoring two or three of those loops, how you use your hands, so that the Court can see? A. You see, with the needles down here, if the needles were down here, you would have to hold your hands over in this way.

XQ137. Take a run and show us. A. I would have to go up here like this, in that case.

XQ138. I notice you are poking that with your hand; is that customary, in the regular practice? A. To catch the first stitch.

1662 XQ139. How do you go behind this? Do you just go behind this—do you just grab up some of the stuff and crumple it up in your hands, this tubular stuff? A. No. That can be done.

XQ140. On the machine. Of course, it is easy enough to see how you do it on the flat thing like this is, but on the tubular machine, how do you do it? A. We go down on the needles this way.

BY MR. WOOSTER:

XQ141. If you could place it over here, I think

that machine would be easier to work with, would that not be more helpful? A. Yes, sir.

BY MR. HODGES:

XQ142. All right; show us how you would do that, now. A. Well, I would get it from the outside. I would press that in, in like that, and catch the last stitch.

BY THE COURT:

XQ143. I see you are pressing that up? A. Yes, sir. 1664

BY MR. HODGES:

XQ145. You turn your needle, do you, before you put it in? A. That depends on the operator. Some of them do that, and some of them do it differently from this.

XQ146. At best, it is a pretty awkward thing to do, is it not? A. Not on the machine.

XQ147. Not on the machine? A. No.

XQ148. This is hardly a fair illustration of what is done right along. A. Hardly. If you take a machine that you can stand right up to, there would be nothing to it. 1665

This ring here is on the inside of the fabric. It is not held by the fabric. There is a fastener in here that holds this out to a post. It holds it to a post.

On this side, for instance, you can press it in easily. You can press it in from the side. It is tight, but you can press it in from the side. I take my hands and do that in actual practice. Our cylinders are altogether too large, and therefore you just take the cloth and press it a little bit on the top

of the stitch and in that way you can catch it. That requires a number of different handlings to it, according to the tension you are dealing with, this way, but on the machine it does not. It is under tension, because that is what makes it bow in there. As I operate my tension, it may be in there below the ring. There is nothing back of it to support it in getting my needle in. In operating my needle I have nothing at all back of it. To overcome that, take a latch needle, get it in here, and take your thumb and press in on that and pull the stitch out
1667 with the needle and hook it right in there. That is below here. I take my needle up about this way. These needles are here and that goes right up under there. In order to get my hook in there, the probabilities are that this fabric would yield just a little on the top and I would press it in under here with my fingers. My needle is running right in parallel with the goods.

I went up under, inside instead of working right on this top surface, to the rib, the direction of the rib.

I have had more than two or three loops after a needle has been broken. Generally I am dealing
1668 with two or three loops only in connecting up a new needle where the other one has broken. There is a stop motion on the machine, and as soon as a needle breaks, the machine stops automatically. Sometimes it will go anywhere from one-half inch to three inches before it will stop. If it is working right, that stop motion should stop it on the first time round. We sometimes have as many as ten or twelve needles. If the needle breaks on the first group, you are going to have ten or twelve loops before it stops. What we are really doing, is when we put in a new needle we get our loop hooked back on the new needle.

That has been customary for a great many years, in mill practice.

SAM SHANOWITZ, a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WOOSTER:

I am 35 years of age; live at 4319 Tenth Avenue, Brooklyn, and am a peddler by occupation. I ped- 1670
dle latch needles to mend runs in stockings. Here it is.

(Machine latch needle with rubber tube over shank offered in evidence as Defendants' Exhibit GG.)

All I have done to this was to put a rubber handle on it. I first saw a pivoted latch needle used for mending runs in stockings while I was in the Service, down South, about twelve years ago. I was in the Service of the U. S. Army. I went down South and I saw a man down there who was demon- 1671
strating and selling this needle. That was in Augusta, Georgia. I can show the Court how the man in Augusta, Georgia, reknitted the stocking. I have a stocking. It was when I was in the Service in 1917 or 1918, war time.

I now have a stocking covering my hand and a part of it held between my little finger and the fourth finger of my left hand. I keep the run on top of my finger and my thumb underneath. I start with my thumb under the run. I work the needle up and down. You must have room to work it

from here to here, and the needle does the work. I am feeding it along over my thumb as I go. I move my thumb along under it to give more room. You just push it up and down and it works automatically. I can do that without looking at it. (Witness operates the needle without looking at it.)

The needle does not hit my finger, it does not hit me at all. It goes right through the material, right inside, that way. I keep my fingers apart. This goes up and down in this way. I move my thumb,
1673 keep it moving all the time, to keep this stuff stretched, controlling the stretch all the way up; I support it the length of my thumb. I have the ladder quite visible by the streaching of the top of my thumb.

If there were two or three ladders or loops together, that had been broken side by side, you just fix one run and then fix the other run.

The man in Augusta, Georgia, in 1917 and 1918 was doing the same thing I am doing. He was selling the needles and telling the people about them. He was giving demonstrations to the people who wanted to buy them. I bought one. I have my own business now. My needles are the same only he had
1674 a wooden handle on top and I use a rubber top; it is not so expensive. I have been in the business of selling these needles about 3½ or close to four years.

Q51. Won't you put the stocking on your hand again and go through the repair motion? A. Yes, sir.

Q52. As I see the position of your thumb and index finger of your left hand over which you have the stocking, the thumb constitutes one side of a geometrical figure in the form of a "V", while the

index finger constitutes the other side of the "V", and the thumb makes the top; is that correct? A. Yes, sir.

Q53. And the little finger holding, the little finger on the right hand—will you put it in operative position and begin? A. Yes, sir.

Q54. Now do a little bit now. A. Yes, sir.

Q55. And the third and fourth fingers on your right hand have the position of resting on the similar fingers of your left hand? A. Yes, sir, but I do not have to do that.

Q56. So that to get back to my first thought, the space beneath the run as you are now holding the stocking and making the repair, is about the length of the thumb, at least? A. Yes, sir. 1676

When I sell the needles I give a demonstration. I have printed instructions to tell how to use them; here is the envelope.

(Envelope "Paramount run mending instructions" offered in evidence as Defendants' Exhibit HH.)

"Paramount" is the name I use for my needles. I have been selling the needles all over, New York City, and out of town. I sell it by means of mail sales, to some extent; I have a few salesmen; I sell them wholesale too. I buy machine latch needles and put this top on them. Some of them are new and some are used; they are not magnetized. 1677

CROSS EXAMINATION BY MR. HODGES:

I saw this done in 1917; that was during the war; I was in the Service. I bought one and I had it at home first, and I wanted to start selling them then, but I did not know where to buy them.

1678 *Sam Shanowitz. Called by Defendants. Cross.*

I saw a man who was selling them about four or five years ago, and I found out from him where he was buying them, and then I started to sell them myself about three and one-half or four years ago. The man that I saw work in New York, he was working for a year or more on that before I started. I saw him working and how he did, and I found out from him where to buy them. It was about five years ago that I saw this man working in New York City. I have been in New York City or Brooklyn, 21 years.

1679 For a run way down near the toe, I would put it over a glass, put a glass over it, maybe. I did it if necessary, but you don't have to do it very often. I did it only when necessary. If you want to work in the foot, or any place you want to work, you can work with your hand. I was working on my hand, mostly. I work over a cup when I can not do it so well with my finger. That has been in the last year or so. We used the cup, but I had much better work on my hand, because I do much better work when I work on my hand than when I work with this cup. I can work it over my hand in the foot of a stocking, but you would have to go underneath, down in the foot part of the stock-
1680 ing. I can work it on my hand also, down in the foot of the stocking.

XQ89. Let us see you do it down there. A. All right.

XQ90. Don't run it all the way down; it would take too long. A. It goes all the way down.

XQ91. It would take too long a time. A. It goes all the way there.

XQ92. Don't do all of that; just do about an inch or so down next to the toe, work down next to the toe. A. Oh, it does not go down any further.

XQ93. Take another run down near the toe. A. All right.

XQ94. All right. Now start right down, make the work come right up from the end of the toe. A. Well, I do not usually start in from this end; do you want me to start in from this end?

XQ95. You can not start in at the end? A. Oh, yes, I can.

XQ96. Can you start in here? A. You have got to finish that off first with a piece of thread to keep it from running on.

BY THE COURT: 1682

XQ97. To keep it from raveling some more? A. Yes, sir.

BY MR. HODGES:

XQ98. I do not want to take the time to do all of that run. A. I can make a smaller one. When you want to take this, you have to tie up with a piece of silk so it will not run away.

XQ99. Run it on down for me. Run it down along about here at the toe. A. I can start from here, about. It does the same way on either side.

1683

BY THE COURT:

XQ100. It is a little more awkward for you this way? A. I am used to working from the top part down.

XQ101. And not from the bottom up? A. No, sir.

BY MR. HODGES:

XQ102. You don't demonstrate down in the toe? A. I can work out of the toe the same way you see.

XQ103. Yes. A. It makes no difference where you start; it works just the same.

XQ104. You work from away toward you? A. It is just the same; you can work any way you want to.

XQ105. Would you make a place where there are several runs together, three or four runs; don't make any long ones. Let me see you deal with that. Right along side by side. A. You want it this way?

XQ106. Don't make it too long; it is not necessary.

1685 XQ107. You take one line and then you take the second line.

I have been doing this work as a new business 3½ to 4 years. I work all over, sometimes in Brooklyn, sometimes in New York City, sometimes in Newark, New Jersey, and other places. I go over the same territory sometimes and I can make a second sale to the same people and they also send me new orders for needles through the mail. I demonstrate it to them and show them how to do it, and then sometimes they buy. If they do not buy but one or two, they frequently send back for another needle. I sometimes have complaints that

1686 they cannot use it. Some of them cannot do it; they cannot hold the stocking right.

I printed the envelope that has been marked Exhibit HH when I started working the needle, between 3½ and 4 years ago, as I said. I got it from the man I saw; he had the same instructions; he had the word "egg cup", 3 or 4 years ago, when I was over in New York.

From the time I started out selling these needles I have been giving out these printed instructions. I do not have a copy of the other man's envelope, but it is the same thing that is in mine, also about

the egg cup. Some people can not work on the hand and they have to work on a glass or cup. The word "egg-cup" was in the other man's and I just copied his. I am continuing the method suggested by him as to the printing.

I do not know how long he had been doing that. Five years ago I had known him to be in this business; he was working the trade five years ago. I went up to him, talked to him and saw how he worked it. I got a needle to see how he worked the needle, and then I did it myself. The man told me where to buy the needles. I bought a needle 1688
from him in an envelope, the same as mine except we have a brown one and his was a little larger, and white. That man was working over his fingers.

XQ146. And although you in your envelope mention the egg cup as well as over the thumb with the fingers curved, did you actually work over the egg cup? A. Well, I am used to working by hand. Some people hold the needle that way better, and some of them work it over the egg cup. If they can not use the hand, they use the cup. I can work it the same way.

REDIRECT EXAMINATION BY MR. WOOSTER: 1689

The method used by the man in Georgia when I was in the Service, and the method I saw this man in New York five years ago were the same as I do; just the same.

The man in Augusta was doing it just the same way as I am doing it here. The only difference was that he had a wooden handle on his needle, and I have a little piece of rubber. The same man used a glass. The man was working under—he was working over his finger and with a glass sometimes

1690 too. He could do it either way. The man in Augusta used his hand. I don't mean the man in Augusta used the glass. He used his hands.

RECROSS EXAMINATION BY MR. HODGES:

RXQ154. So he operated more over his finger or thumb, pressing his thumb under? A. I didn't notice that close.

RXQ155. In Georgia? A. I didn't notice it. He was working it the way I did.

1691 Just exactly the same way I did, right down through the fabric. That man is out of town, and that was 12 years ago. I know his name. He was not living in Augusta at the time; he was traveling from town to town, selling in every town that he came to. I could not locate him. I was in the Service at that time, and I just saw him do it, and I bought one of the needles. About 3½ or 4 years ago I decided to go into business for myself.

I bought a needle from him. It had some kind of instructions; I don't remember just what it was. I sold something else after I got out of the army. I saw the man in New York that reminded me of

1692 the fellow in Georgia, and they were selling pretty fast too. And I thought it would be a good idea to get into it myself. I bought one of his entire wrappers and he told me where to get the needles.

The Court: During operation by the witness, the needle was held from 45 up to practically 90 degrees.

Recess.

CHARLES McC. CHAPMAN, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WOOSTER:

Q1. Will you state your name, age, residence and occupation? A. Charles McC. Chapman; 64 years old today, Mount Vernon, New York; occupation, patent expert and patent solicitor.

Q2. Will you state your experience in textile and especially in knitting, with which this suit is con- 1694
cerned, and your experience in the reading and understanding of patent drawings, specifications and claims? A. I was for upwards of fourteen years on the examining corps of the United States Patent Office. While in the Patent Office I made a special study of sewing machines, which, of course, include its instrumentalities, such as needles, hooks, and so on, and incidentally made a study of the textile art, because my work in the sewing machine art took me into that class and various analogous classes in the examination of applications for patents.

I have been practicing my profession since the year 1902. 1695

BY THE COURT:

Q3. You mean you left the patent office in 1902? A. Yes, sir, resigned. I have been practicing my profession since the year 1902 in New York City. I have frequently given expert testimony in the Federal Courts in this District.

1696 *C. McC. Chapman. Called by Defendants. Direct.*

BY MR. WOOSTER:

Q4. Both under the new and old rules, Mr. Chapman? A. Yes, sir. In the Eastern District in Brooklyn, Eastern District of Pennsylvania, District of Delaware, the District of Massachusetts, one of the districts in the State of Ohio, and in 1913, gave testimony on behalf of the United States Government in the matter of its petition against the United Shoe Machinery Company. Particularly in connection with this case, I have made a very ex-
1697 tensive search of the prior art and have made a very careful study of all the mechanisms and instruments, as well as instrumentalities that are employed in knitting and in making the fabrics on knitting machines, mending runs, and also those instrumentalities which are similar in both knitting and the sewing machine arts.

Q5. Have you made any special study of knitting and repair of knit goods since you were retained in this case, and if so, state generally what you have done? A. I have. I have made a careful study, and not only of this particular patent in suit, the patent to Stephens, but also of the patents
1698 which are involved in the suit and which, as I understand it, are owned by the defendants, that is the Finch patent and the Van Dyke patent; I have also visited mills where knitting machines are in operation of various types and have studied very carefully the matter of mending runs of all kinds and in all manners.

Q6. Have you read and do you understand the Stephens re-issue patent 16,360, here in suit, and have you also read and understood the original patent 1,564,379? A. I have read both of the patents and I believe that I understand them.

Q7. The patent in suit has been involved in three previous litigations. Have you read and do you understand the records in those suits? A. I have read all the records that you refer to, one being the case in which Evalyn Stark was defendant.

BY THE COURT:

Q8. That is the Kansas City case? A. That is the Kansas City case before Mr. Justice Otis. I have read the record in the Finch case and I have also read the record in the Gearhart case and I 1700
believe I understand them all.

Q9. Where was the Gearhart case tried?

Mr. Wooster: Western District of Pennsylvania before Judge McVicker.

BY MR. WOOSTER:

Q10. Have you heard the testimony given thus far in this case? A. I have.

Q11. And have you read most of it? A. Yes.

Q12. As you have heard the position of plaintiff stated here as to the meaning or scope of Claim 23, is it the same or different from the position of 1701
plaintiff as to that same claim in the Stark, Finch and Gearhart records? A. I have carefully studied the Claim 23 of the patent in suit, and I have been particularly struck with the difference in the allegations of the plaintiff with reference to the meaning of the said claim 23 in all the suits to which I have just referred.

BY THE COURT:

Q13. Do you mean they claim a different thing in each case or claims different in this case from the

1702 *C. McC. Chapman. Called by Defendants. Direct.*

other cases? A. Claims different in the other cases from the meaning of the claim in suit. In other words, in the Stark case, considerable stress was laid upon the magnetic feature of the hook and the latch, pivoted latch, also guard. As I recall it, very little, if anything, was said concerning the holder.

BY MR. WOOSTER:

Q14. Excuse me, in the Stark case there was an
1703 egg cup featured as prominently as here?

The Court: He said very little was said about it.

The Witness: Comparatively very little was said about it. It was mentioned in the Finch case, in which it seemed to me that the plaintiffs took an altogether different position, and the only way that I could account for it was that an attempt was made to read the invention of the patent in suit within the terms used by the Finch patent in setting up the invention of that patent. In other words, there, for the first time, was introduced the
1704 matter of the punch method and reciprocation of the needle in mending runs.

In the Gearhart case, quite a bit of stress was laid upon the feature of magnetism together with the holder, which again was alleged to be an egg cup in contradistinction to a porcelain dish.

BY THE COURT:

Q15. Then you think, as they have gone through these various Courts, the point of their attack has varied from time to time, is that what you mean? A. Yes.

Q16. They have not always claimed everything, and here you think they are claiming everything that they have severally claimed in these other cases, is that it? A. This particular case seems to be now an accumulation of all the instrumentalities of the patent in suit, generically expressed.

BY MR. WOOSTER:

Q17. As the plaintiff's punch method or right line reciprocation of the needle has been stated here by plaintiff's counsel and Mr. Stephens and Mr. Losh, what basis do you find for that in the patent in suit? A. I found no foundation whatever for it. 1706

Q18. Will you take the patent and state your reasons?

BY THE COURT:

Q19. Now, looking at the thing from the standpoint of a novice entering, without any prior art, into this sort of cases, you can well understand how a person has a thing which he conceives to be of a certain kind and he encounters what he may regard in different places as different kinds of attacks, on this thing that he has, and it is quite natural that he does not stress equally visavis of these several attackers, the same things. That has nothing to do with what the effect on this case is, but I do not think a series of different attitudes to avoid that favorite word "plurality" is necessarily a sign of particular weakness, if they have a different set of people to go against each time. I simply throw in that suggestion so if you want to deal with it later, you may do so. All right, you may proceed. A. The claim, as I understand it, 1707

1708 *C. McC. Chapman. Called by Defendants. Direct.*

is claim 23, and in its preamble directed to "an improved method of repairing runs or ravelings in the fabric"—

The Court: Now, I will tell you what would be a grand thing, so far as I am concerned, Mr. Chapman, and that would be for you to tell me—this is for my general education,—conceive of this situation: Suppose suddenly someone comes in and says there is a patent, what is your technique of approach to determine what that patent means? Suppose you
1709 had nothing here, leave out every claim but Claim 23 of the specification and the drawings, and somebody gives you that and says, "Mr. Chapman, what does this patent mean?" Will it take very long to tell me what your approach is? Of course, you read it—perhaps this is a silly question, but I am such a firm believer in the approach to things, and I often think it makes a difference in the correctness or incorrectness of your result.

A. The first think I would do is read the patent.

1710 BY THE COURT:

Q20. Read the claims? A. I would read the description first.

Q21. The specifications first? A. Yes, in order to learn what you might call the general idea of what the invention is.

Q22. Then would you pause and try to imagine what is emerging from this idea in the way of claims, or would you go on and read the claims? A. No, having gotten an understanding through the medium of the specifications and drawing of what

the invention really is described to be, as disclosed in the patent, I would then read the claims, and through the language of the claims, I would endeavor to determine just what the scope of the patent is.

Q23. In other words, you just read the whole patent through, following the drawings and specifications and all? A. Following the text and the drawings.

Q24. Following the drawings with the text and go right through with it? A. Following the text and drawings and going through with it from start to finish. 1712

Q25. When you go on to test the thing, it is just a question of reading English and making up your mind what the words mean, of course, with some added knowledge? A. That would be my first endeavor, to determine precisely what the language of the claims means.

Q26. You just read the patent through; there is no trick whatever in approaching it? A. None whatever.

Q27. You do not try to look at the claims and see what it could possibly be based on or vice versa? A. No, sir.

1713

The Court: Well, I guess that was a silly question, go on.

The Witness: Oh, I don't think so. That brings out the technique of the patent expressing the patent's procedure. After having determined as nearly as possible from the language of the description and claims what the invention is, then we would try to imagine, without a search that would be preliminarily, what the real prior art is, in order to determine just how much breadth or scope might be given to the language of the claims.

Q28. You mean just out of your knowledge and experience? A. Yes.

Q29. Take myself, for instance, looking at this claim 23, having seen people crocheting and having seen other kinds of needlework of various sorts, you would sit down and ponder on the thing and see just exactly what this claim 23 means, regarding the prior art, and then come to a certain point to see if this thing is something rising above it, is that the way to approach it? A. Yes, sir. Of course, after that, in order to determine just what
1715 the claim would ultimately be reduced to, we would have to make a so-called validity search. That means a complete research of all prior art subject matter, such as patents belonging to domestic publications of all kinds, oftentimes going into the British abridgements and encyclopedias, which give extensive knowledge of various arts and avail ourselves of all other things which would have any bearing whatever on the subject matter disclosed in the patent, and having all that before us, we would then endeavor to scope, so to speak, the particular claims of the patent and determine just how far they might be stretched or applied.

Q30. It is somewhat analogous, I might say, to
1716 a relief map, as applied to the claims, after the fashion of a topographical map, showing the heights and depressions— A. Yes, the hills and dales of that particular claim.

By Mr. Wooster:

Q31. You might tell the Court where the file wrapper and contents of the patent in suit fit in.

The Court: That would be helpful too. Tell me about that.

A. Frequently, in fact in all cases, we also refer to the file wrapper, so-called, and contents, which is the application papers on file in the Patent Office, which are preliminary to the granting of a patent.

The Court: And there are arguments and things of that sort before this thing is brought about?

The Witness: Yes, sir.

BY THE COURT:

Q32. That is probably similar to the debate in Congress preceding the enactment of a statute? A. Yes, sir. Oftentimes we find limitations in the courses of these arguments. They enable us to get a better idea of the case as a whole. 1718

Q33. It helps you to construe confusing words? A. Not only the terminology of the patent, but of the invention itself, because oftentimes claims are made and very frequently patent references are cited, discussions of these claims have often been made by counsel. Oftentimes the effect of this limitation is to bring down from this group of claims, one particular claim which is the sole disclosure on which the patent is granted. 1719

Q34. When a man drops his claim during his first application, that is called a cancellation by him? A. Yes, sir.

Q35. After he gets his contract with the Government in the shape of a patent, which is an exclusive contract, then if he wants to reframe that contract, he secures a reissue? A. Yes, sir.

Q36. Sometimes he has to take that up, if it be an unfavorable decision, and he has to make a disclaimer, that is a uni-lateral method of getting rid of something? The bi-lateral method of doing that

is to apply for re-issue, and the Government and he work out something new, carve out something new? A. The re-issue is based upon two or three things, two or three very important things. First, that there has been an inadvertence, accident or mistake.

Q37. Just like they reframe a contract. A. Yes, and then after they go over that carefully, word by word, as they show that the inadvertence, accident or mistake arose without fraudulent intent, and without any effort or desire on the part of the

1721 patentee.

The Court: You come into the Patent Office with clean hands.

Mr. Wooster: And also to point out what the phrases mean in his patent; what the words and phrases mean in his patent.

Q38. It is like a petition, I suppose, a sworn petition, after giving grounds for modification of that contract with the Government; after having done that, you proceed further. A. There is also this point which Mr. Wooster has just mentioned, they have to be particularly specific.

1722

Mr. Wooster: And they also have to point out how the errors arose in the patent.

The Witness: Yes, they have to point out how the errors arose, and what effect that has on the patent as rendering it invalid.

Q39. And if you do get a re-issue as the result of that application, then, of course, the previous original patent disappears from the picture, unless it might be invoked in some way, does it? A. It is supposed to have been surrendered and the other takes its place for the continuation of its term.

Q40. It only lasts for the span of years between the original issue and the remainder of the 17 years, not for another 17 years, it is not the same as a renewal or anything of that kind? A. No, for the remainder of the life of the original patent.

Q41. If you have an interference in the Patent Office initiated by some third party, that charges on its issuance an application it was improper, then that is heard before a governmental administrative officer who handles it as a sort of miniature litigation? A. Yes, sir.

Q42. Is oral evidence taken in cases of that kind, in interference cases, or do they just go up on affidavits? A. Yes; we have to take it just as in ordinary Circuit Court cases, we take it in deposition form, and on oral proof. 1724

Q43. On oral proof as well as depositions? A. Yes, sir.

Q44. In order to put in that proof, that means that you have to establish the issues to be tried; now, who establishes those issues? A. The Patent Office establishes that issue.

Q45. Of course these interferences may be by a third party. Now, I have in mind a preliminary injunction that came about with the Patent Office initiating the interference. What was that? A. That is the proceeding which is initiated by the Patent Office being friendly to one of the parties. When the Patent Office is friendly to one of the applicants, for instance, if A files an application and during the course of examination the claim is decided by the office to be allowable, and B has an application pending in the Patent Office at the same time, and B has not been quite so fortunate in having a good solicitor, and has not made the claim quite as broad in scope as A's, they won't allow it in A's case. 1725

In that case, as a friendly act toward B, they will notify B of A's claim, for the purpose of interference.

Q46. The first possible source of any information being given to anyone outside of the Patent Office, is that? A. Yes, sir, up until that time they are held in the secret archives.

Q47. Up until that time no one knows anything about it, except the employees of the Patent Office? A. That is correct.

Q48. This sort of thing you cannot find in any
1727 books on patents. A. No, I would like to add to that the granting of a patent through the medium of the offices of the Patent Office is not a formal thing, but it is to a great measure a matter of personal equasion. The Patent Office, from time to time, takes a number of college graduates and puts them in the Patent Office. They are in service there for some time before they are of any value to the Patent Office. In fact, I should say that for a period of six months to a year, they are of very little value, if any, to the Patent Office. Oftentimes claims are allowed that are invalid during that time by these inexperienced young men.

Q49. That comes about when there is no old head
1728 to do it, and where the old practitioner would not have allowed that? A. Older and better heads would have probably worked that down until they could get just at what they are entitled to, and allow them that and no more.

BY MR. WOOSTER:

Q52. Well, I will ask you this. Do you understand what Mr. Hodges and Mr. Stephens and Mr. Losh and Miss Gibson meant by "straight line" or "right line reciprocation or punching", as they

sometimes call it? A. Yes. I understand that very thoroughly, because that is a very common expression in the sewing machine art. In fact, I think it must have been taken from the sewing machine art. It applies to a very common type of knitting machine, which is a latch needle type,—that of the reciprocating motion in a right line. That is where they have machines that use that kind of reciprocating motion in a right line.

Q53. The way that it is shown in Exhibit A-18, did you notice that here? A. Yes, sir. In that exhibit, and in some other machines the needles also 1730
have a slight outward movement, but the down movement on the machine, the down movements of the needle on the machine for the purpose of taking the thread and producing loops, and connecting these loops with other loops is a right line reciprocating motion in a single plane.

Q54. In a line? A. In a single line. Right line reciprocation. Of course there is also a circular motion in a holder.

Q55. When a body oscillates in a plane, is that properly called right line reciprocation? A. I should call it gyration. It is a resultant of several motions.

Q56. As I understand gyration, it makes a kind 1731
of revolution, whereas oscillation is like a pendulum in a clock. A. Around the axis. In other words, we have one reciprocation motion which is like the pendulum movement in a clock, instead of the straight line reciprocation which is demonstrated in a sewing machine.

Q57. Will you take the Stephens re-issue patent in suit, and state whether or not you do find in it, and if so, where, the right line reciprocating movement, or where that was intended to be disclosed,

or was actually disclosed? A. I find no such reference in the Stephens specifications. There is nothing in this patent in the matter of its drawings or descriptive matter which even suggests merely a right line reciprocation as a movement applied to the needle for the purpose of mending runs.

BY THE COURT:

Q58. On the contrary, would you say that the Figs. 4, 5 and 6 contained therein intend to demonstrate or rather—this is a rather difficult thing
1733 for me to get at exactly—to destroy any presumption of a right line reciprocation. That is what I understood many of Mr. Wooster's questions were aimed at on account of the defendant in this case. A. Yes, your Honor, I think that is quite clear. It absolutely destroys any suggestion of right line reciprocation.

Q59. You think it means like a swing, and a pull like that, and a swing and a pull, so that you would be over on this way, and then you would swing over this way, and it would be what you might call an eliptical movement with the top of that instrument as well as the needle in it, remain-
1734 ing substantially in a fixed position with respect to each particular completed movement? A. Yes, I think that is true. I believe that these motions which your Honor has described, are still further complicated by a vertical rising and falling of the needle in its effort, through the medium of the hand, to draw the loops one through another, and draw it on up through there and get it in position to go through the other loop.

Q60. In other words, that there might be in a movement of this kind that you are indicating as impossible, otherwise, a cone-shaped movement both

above and below the fabric; is that what you mean takes place here? A. Yes, sir.

Q61. Look at that; is that what you mean? A. In addition to that, there is a dip as the result of the rising and falling, there is an elevation of the needle into that position, and then a drop.

Q62. That sort of a motion? A. Yes, sir, that is clearly described. I think I can show it to you by reference to the figures on the drawings. I have drawn a few arrows on these several figures 4, 5 and 6, which demonstrate the movements of the needle. I can describe that in words, if you wish? 1736

Q63. Go ahead, I do not want to interrupt you. A. With reference to Fig. 4, I think I should interpolate here that Figs. 4, 5 and 6 in the matter of showing the fabric, are diagrammatic, and they are enlarged. The scale is not the same as the scale of the needle; not only that, but there is not only an enlargement of the fabric in these, the enlargement of the mesh, but the mesh of the fabric is stretched laterally as well as longitudinally. That is for the purpose of demonstrating as clearly as possible, the manner in which the needle is inserted and the loops are drawn and placed one through the other in reknitting the run. 1737

Q64. Is that offered as a criticism or a limitation, or what? A. Simply for the explanation.

Q65. All right. A. With reference to those figures, it will be noted that in Fig. 4 the effort is to show the needle after it has entered the last loop of the run.

Q66. Yes. A. Now, of course, these loops in the actual fabric, when stretched as those figures show the fabric to be, are very fugitive. They more or less vanish. You try to get hold of the last loop of

a run with the hook of a needle, and you will find it getting away from you all the time.

That figure is intended to illustrate the engagement of the needle with the last loop of the run, and also to demonstrate the forward right line movement of the needle. That places it where, if it goes sufficiently far, the hook of the needle will just enter under the next succeeding line of the ladder.

Q67. You say the last loop of the run. It might just as well represent a thread that came down and
1739 met the needle after the stabbing process had occurred? A. Yes, sir.

Q68. Just as well, in other words, any of those? A. Of course, in this patent, in the specifications it is particularly stated that the effort is to get the hook of the needle into the last loop here.

Q69. You mean the last run here? A. Yes, sir.

Q70. You mean that the last run, by trying to pick up something that is almost impossible to do, you can put it back, and if that last run comes out you will have it going over this way (indicating). A. Yes, that is so. Now, then, in fabrics which are made of a single thread made into chain stitches.
1740 it is impossible to catch that loop, except in one way, and that is by turning the needle over with the handle substantially parallel with the plane of the fabric and the hook towards the operator.

Q71. If you do that, you have to turn it around? A. Yes, sir. You have to come back.

Q72. You can not come back? A. You have to turn that needle back with the needle in that loop. Then you push it through the loop. Then as is shown in Fig. 4, that is what Fig. 4 is intended to show, in my opinion. That is, after the loop has been caught. The actual movement of the needle

after the loop has been caught, is a right line movement away from you, or toward the rear of the fabric or upwards of the run. Now that presents the hook directly under the second rung of the ladder. Fig. 5 is intended to illustrate the position of the needle, the loop, and the thread, the bar or second bar "b" after the said bar has been caught by the hook and the latch is engaged by the hook so as to close the eye of the needle.

Q73. And the pressure is going to begin over the loop on the shank? A. Yes, sir; and the handle of the needle has been shifted laterally in a curved 1742
line, we will say, as well as having gone back in a right line. It is the result of two movements. A backward movement in a right line and a curving movement.

Figure 6 is intended to illustrate the position of the needle after the second loop has been drawn over the first loop, and the resultant there is backward movement, vertical movement, and a left hand curving movement; it is the resultant of this left hand curving movement.

I am giving you that as specified, a description of the method of operation which begins with line 85, page 2, and terminates on page 3, line 30.

With reference to this last figure, I desire to call 1743
your Honor's attention to page 3, the descriptive matter beginning with line 12, which says:

> "The operator now lifts the needle carrying the loop 'c'—that is the second loop—up over and around loop a, pushing the needle forward as in Fig. 4 through the loop c, and hook 1 is inserted beneath the next succeeding thread d. After the loop c shall have slid over the end of the latch or bridge and beyond it, the needle

1744 *C. McC. Chapman. Called by Defendants. Direct.*

is reversed or pulled back, during which motion the latch reaches for and grasps the thread d, forces it into the hook, just as it has previously done with the thread b as shown in Figs. 5 and 6".

That form of operation can be carried out in only one way, and this is why: Drawing the needle back, considering Fig. 6, lifting it vertically and carrying it up over and around which results in a curving movement to the left in order to get the
1745 needle back again ready to fasten the second loop which it has begun and assuming approximately, again, the position of Fig. 4.

That rather destroys, in my mind, any idea of a right line reciprocation since it involves at least five movements.

By Mr. Wooster:

Q74. Do you recall that Mr. Stephens has said that Fig. 6 is correct if we show the latch open, and gives a fair idea of the position followed by Fig. 4, that is, after the first loop has gotten into the hook? A. I recall that Mr. Stephens, I think, said some-
1746 thing about the loop not being in the proper position on the needle.

Q75. Taking Fig. 4 as a position successive to Fig. 6, do you mean to say that would be the right line reciprocation of the needle? A. Oh, no reciprocating movement.

Q76. A right line movement? A. No.

Q77. How can you get a right line movement with the handle swinging from the position of Fig. 6 all the way around to the position of Fig. 4? A. You referred to the position of Fig. 4.

Q78. I am referring to Fig. 6, and the position on the preceding Fig. 4. A. Yes.

Q79. Now, is that a right line movement to get from the position of Fig. 6 to that of Fig. 4? A. It is the resultant of the three movements I have just described up and over and a left hand movement in order to get into the position of Fig. 4 again.

Q80. What indication do you find in the patent that the needle in this position of Fig. 6 and note the angle to the run, that the needle is swinging around on the hook to be parallel with the position of Fig. 4 before it is moved on forward, as the patent says? A. I don't know that I quite apprehend what you mean. 1748

Q81. What indication do you find in the patent that the needle in the position of Fig. 6 and note the angle to the run, that the needle is swung around on the hook to be parallel with the position of Fig. 4, before it is moved on forward as the patent says? A. I have found no specific description of any such movement other than what I have described following the specification at the point that I have just indicated, but I believe that the Fig. 4 illustration is intended to indicate the position of the needle after it has gone through its compound movement of Fig. 6 and for the purpose of resuming the position of Fig. 4 in order that the needle may again be directed through the succeeding loop. 1749

Q82. You don't mean that Fig. 6 or any other figures by themselves, show a movement, do you? A. Why, yes and no. They are indicative of movements, but those movements are compounded with the resultant that we can, as I read and have read the specifications, the resultant is given to us of at

least five movements, in order to concatenate the loops in mending the run.

Q83. That is the result you get? A. Yes, sir.

BY THE COURT:

Q84. It struck me quite early in the trial that it was almost a necessity to hold the latch needle somewhat over to one side, in order that the latch might be reasonably certain of clearing the next succeeding rung of the ladder or thread. The length
1751 of the latch is wider than the ladder. You get a kind of triangulation there with a series of triangles where it is physically imposible to pass through there unless there is a slight slant given to the latch so that it will be enabled to clear the thread. A. That is true.

BY THE COURT:

Q86. If that is what laterally from the side of the run means, why, that is a natural description of what they are doing. A. I believe that is literally true. For instance, the space between two bars and the side walls, which would constitute the run, are
1752 rectangles, and they are a little longer, laterally, than they are forwardly up and down the run. The result is, with a latched needle, one which is pivoted, that is, the latch pivoted, it is necessary to shift the needle laterally relatively to the run, in order to enable the hook point and the latch to get into the space between the two rungs and properly get under the next succeeding rungs and bring them back as a loop through the end loop.

Q87. Having successive concatinations,—paraphrasing Dr. Johnson. A. Yes, sir.

BY MR. WOOSTER:

Q88. Can you describe in words and by numbered paragraphs the five movements which you have counted in carrying out the method disclosed in this Stephens patent in suit, and as far as you can, will you give specification references for each movement? A. I can. In the description of the patent in suit, page 2, beginning at line 85, I find the movement of the needle to be described,—the first movement is set up as "the operator at first inserts the magnetized hook 1 through the last loop 1754
a of the ravel or run and beneath the next thread b." That movement, I take it, is somewhat preliminary. It is for the purpose of getting upon the hook of the needle the loop with which to begin the operation of mending the run.

Next, the specification, continuing on line 90, page 2, says:

> "The needle is then slid forward until the loop a slides over the free end of the latch or bridge 4".

That is what I previously described as being the first movement. That movement is illustrated in 1755
Fig. 4 of the drawings.

Q89. You mean the position is? A. I believe that position and movement are practically the same thing here.

BY THE COURT:

Q90. The position is engaged to the movement per se? A. Yes, I think it is probably more readily understood by referring to it as movement rather than as position, because the positions here in the

figures are stationary, while the understanding, I think, of the figures gives that as movement in producing the mending of the run; the next movement is described in the patent beginning at line 97, page 2, wherein it says:

> "The needle is then pulled back in the reverse direction, the loop a sliding back against the latch or bridge, and swinging it against the hook, as clearly shown in Fig. 5."

1757 Now, in reaching that position of Fig. 5, the needle has been not only moved backwardly, but it has been shifted laterally to the right, relatively to the run.

BY THE COURT:

Q91. You think they use the words "reverse direction" advisedly, instead of saying "direct reciprocation"? A. No, your Honor, I do not believe it is equivalent to reciprocation.

Q92. I know it is not equivalent to reciprocation. If they wanted it to mean anything different from direct reciprocation, they use the words "reverse
1758 direction", which is a term that means going backwards, but it does not necessarily mean going backwards in a straight line? A. Right, sir, that is the way I understand it.

Q93. That is the way you understand it? A. That is the way I understand.

Q94. They use that word advisedly, so as not to limit themselves to direct reciprocation? A. Yes, sir. Now, following that description, there is quite a bit of detail of operation going on to page 3, beginning line 12, the other movement to which I have referred, is described as follows:

"The operator now lifts the needle, carrying the loop c up over and around loop a."

which are the movements which correspond to Fig. 6, and which result in pulling one loop through the other and preparing the other, the second loop for the next or advancing movement of the needle.

Following what I have just read, the specification says:

"Pushing the needle forward, as in Fig. 4, through the loop c, the hook "1" is inserted beneath the next succeeding thread d." 1760

Q95. That is what you spoke of as the left motion, which you are referring to, which I had difficulty in understanding at first, that is, in swinging around in somewhat more nearly parallel relation, so far as its plane is concerned, with the run? A. With the run of the fabric. The compounding of those movements results in concatinating the chain stitches or loops and draws the rung b as in Fig. 5 to the side, deflecting it after the hook has caught it and drawing it back to the first loop, which is indicated at a in Fig. 5 and enables the needle to reach the position shown in Fig. 6. In 1761 that position it is ready then to be moved laterally back toward the run to the left and to be pushed forward through the second loop.

Q96. And if plunged towards the plane of the fabric, the latch has a bare chance of escaping, taking more than one of the next forward rungs of the ladder? A. Yes, your Honor. As I understand it, in concatinating these bars into loops or making or reknitting the run, the hook catches one of the bars, as shown in Fig. 5 and deflects it, after which

that bar being under the point of the hook, the latch falls down upon the point of the hook.

Q97. Pressed down? A. Yes, sir. On the other hand, if the latch be very long, it will fall down in all probability upon the bar itself, before it strikes the hook. Under those circumstances, the latch by aid of the loop through which it is being drawn or thrust is caused to strike that bar with some pressure, with the result of pushing the bar into the hook avoiding its escape on the backward movement of the needle.

1763 Q98. So far as to reach beyond that next successive bar of the rung of the ladder, picking up two threads instead of one and causing possible confusion? A. Yes, if the hook be long, it is liable to strike one or more threads.

Q99. If the latch be long, you mean? A. I meant to say if the latch be long, of course, it is liable to strike one or more cross bars. If it be short, it has a better chance of escaping the more cross threads, just striking the one that it is particularly intended to manipulate and draw into the loop.

Q100. The only purpose is to close the jaws of the hook with the upward stroke, whatever direction that stroke may be? A. That is the full function,

1764 in order to close the eye of the needle and prevent escaping of the bar or loop, which is being formed.

Q101. Yes, that is the purpose of it? A. That was the original purpose. That is the purpose in all these machines.

Q102. In everything that has been done in this art, it is the same thing, is it? They close it in some way, even in those bearded needles, as they call them, with the spring, they will close it and naturally open in their normal position while the hook has nothing to do with the closing of this, it is just passive? A. Nothing at all, it is passive.

That is operated by a loop which is sliding toward the point—

Q103. In so far as it exerts this inhospitable magnetism toward the latch in the patent of the plaintiff, is that right? A. Yes, your Honor. In all these little household things,—these knitting machines—circular knitting machines, such as you see there, as well as the knitting machine of the Tompkins type, which you see in this Exhibit DD, and the machine to which I referred, as well as in the so-called flat bed machines or machines for making the fabrics for fashioned goods, the needles all operate in the same way. They have a movement which 1766
enables them to take the thread, which is passed in, they move downwardly or backwardly and draw that thread in the loop and subsequently get it up with the eye closed, so that the loop, which is passed up the shank or along the shank, is so-called knocked over, that is, knocked off at the end of the needle. That is the operation of all the latched needles, either in a machine or out of a machine.

BY MR. WOOSTER:

Q104. According to your reading of the Stephens patent, is the forward stroke of the needle in the 1767
same line as the backward stroke or in a parallel line? A. Why, it is not the same as the backward stroke; it is not in a parallel line, it is in a line which is compounded of two elements, a lateral movement relatively to the run and an upward curving movement.

BY THE COURT:

Q105. That might be accurately, though roughly, described as in the reversed direction, is that right? A. I think so.

1768 *C. McC. Chapman. Called by Defendants. Direct.*

BY MR. WOOSTER:

Q106. First in the claim is:

"Stretching the fabric over a suitable holder."

That is the only stretching mentioned in the claim, is it not? A. It is.

Q107. Would a reader of that claim assume that to be a stretching of the goods while the succeeding steps were being carried out? A. I hardly think
1769 so. I would call that a step which involves merely stretching the material so that probably the looping could be carried out—the mending of the run could be carried out.

BY THE COURT:

Q108. You said there it meant something else; do you have any other sentence continuing the stretching of the fabric over a suitable holder until the operation is completed or something like that? A. I don't find anything like that in the patent.

Q109. No, I say, do you claim that it ought to have something like that in the patent in order to
1770 have the method adequately described? A. By all means. As I understand it, and as I have observed the method as carried out by all the operators here and Mr. Stephens and all the methods which I have observed in my research, there is constant shifting and stretching and the manipulation of the fabric over the holder, not only from the beginning when an effort is made to catch the first loop or get the loop back of the shank of the needle, but all during the operation of mending.

Q110. Then the only thing you think this could fairly describe would be a fixed fixing of the fabric, such as you have in this Graf patent Exhibit—

Mr. Wooster: Exhibit BB.

Q111. (continuing) Where you have a little ring that fits over the aluminum receptacle, and hold it stretched entirely; in other words, that is a stretching that would occur before they began to do anything under this, wouldn't it? A. Yes, sir.

Q112. And you think that is the only kind of 1772
stretching that could be fairly considered from what they say here? A. There is absolutely nothing else in the patent which teaches anything but that?

The Court: They provide for stretching over a suitable holder, a circular or repair device in order to maintain the right to continue the stretching or modify it to go along, and you say they ought to have something else in the patent—that does not strike me as a good point. I am trying to be frank with you just as we go along, so that you can straighten me out, if I am in error—I say, that does not strike 1773
me as good a point as the other things. It seems to me that is being a little more technical than I think even a patent ought to be. I may be quite wrong but I am just giving you my impression. When they say stretching a fabric, it does not say stretching by hand or by an elastic band, or any particular way, but stretched over a suitable holder. Maybe that is too vague a claim, whether it describes a method and perhaps you should say something else, as a matter of practice, I don't know.

1774 *C. McC. Chapman. Called by Defendants. Direct.*

A. Your Honor, in my practice and my experience, and I have handled a great many of these method claims, I have allowed many in the sewing machine division where inventors are prone to claim methods and it has always been the interpretation of the Examiners to read an element of a method in a so-called static way unless there is something else in the language of the claim which indicates that there should be a constant change or manipulation.

1775 By the Court:

Q113. I see. In other words, when you say "stretch" you assume that it was stretched once and for all, unless they said, modified as may be necessary, as the work progresses, or something of that kind, otherwise you read it as a static and not as a kinetic thing? A. That is it exactly. Each of the elements in a method claim is very much like each of the elements in a machine or combination claim.

By Mr. Wooster:

1776 Q114. If you stretch before you insert the needle, as stated here in Claim 23, is not that a qualified stretch, such as needed to prevent the loops from running further until you can get the needle in? A. Why, it necessarily must be else the whole situation would be changed. To my mind the stretching there would necessarily mean such a stretching as would enable you to perform the first step of inserting the point of the needle or hook of the needle into the first loop.

Q115. In your experience in examining method claims and litigating them and testifying about them are not successive or additional manipulations, as a general rule required to be stated where important? A. That is absolutely correct.

BY THE COURT:

Q116. In other words, if plasticity of method is desired, it has got to be defined in some appropriate way, that is the point of it? A. Yes, sir, the plasticity must be explained. It must be a part of the claim. 1778

BY MR. WOOSTER:

Q117. As you saw Mr. Stephens and Miss Gibson working the method which they said was their commercial method, did you or did you not see them interpolate an additional stretching step after they made the initial step, which did not extend the run and insert the needle? A. I did. Undoubtedly they not only stretched according to the terminology of this claim, but they continued stretching, and it was of such a nature as to carry it entirely, in my opinion, outside of any possible meaning of stretching contained in this element of the claim. 1779

Q118. Will you put on the record, in compact form, what you do find in the patent about stretching over a suitable holder, as stated in the claim and what directions does Mr. Stephens give for stretching either in one direction or both directions or how tight or how loose or when to do it and when not to do it? A. I find in the specification,—or rather, I should say, in the discription, because the term "specification" is often meant to include

1780 *C. McC. Chapman. Called by Defendants. Direct.*

the claim, I find in the description, page 1, this statement:

"This objection (referring to an objection stated) is obviated—"

The Court: What line is that?

The Witness: This is the beginning on line 10, page 1. (Continuing.)

"is obviated in the present invention by stretching the fabric over a porcelain dish, allowing
1781 sufficient depth for the free use of the needle."

BY THE COURT:

Q119. Now, from your experience in that matter, a conception would arise as you read those words, or a thought would be reflected by those words, which would mean a permanent stretching of some kind over a porcelain dish, (the porcelain dish part we are not concerned with for the moment), but a permanent stretching is what it would mean to you? A. That is the way I would read that expression, and that mode of interpretation is quite carefully, I think, carried out in the first element of the claim.
1782 There is no other stretching referred to. There is no other indication of a different stretching than an original stretching, which remains.

Q120. If this claim 23 had said:

"Stretching the fabric over a suitable holder with the hand and maintaining the tension by hand, as necessary from time to time, or changing the tension, shifting the tension by hand from time to time as necessary"

you would say that that was an adequate expression of a certain appropriate degree of plasticity in the stretching, would you? A. Yes, sir, I would probably use different language—

Q121. Of course, I suppose you would use better language for it. A. Not better language, your Honor, but a different term. I would use the term "manipulate".

Q122. Of course, that means doing it by hand; it is simply a Latin derivative; if you used the term manipulate, you would mean that you were doing it by hand, would you not? A. Exactly. I may add 1784
we used to apply that particular test to all legitimate methods in the patent office and it is still applied in actual practice, that if it can be carried out by hand, it is a true method; if it cannot be carried out by hand, but is entirely dependent on manipulation by mechanism, then it is not a true method, but a function of a machine.

BY MR. WOOSTER:

Q123. In which category do you consider this claim 23 to fall? A. I consider this claim 23 in the category of functions; it is purely the result of 1785
manipulation by mechanism; it is not, in my opinion, a true method claim.

BY THE COURT:

Q124. Is method always limited to manual operation? A. Oh, no, your Honor. That is one test that the Patent Office always applies with reference to method claims, as distinguished from functional claims.

1786 *C. McC. Chapman. Called by Defendants. Direct.*

The Witness: I have not finished my answer. As compared with the language of the Claim 23 in suit, which says:

"An improved method of repairing runs or ravels in the fabric which consists", etc.

I direct attention to the introductory words and paragraph of the description, lines 1 and 2, page 1:

"My invention relates to an improvement in needles and to method of use."

1787

Now, that does not say to an "art" or a method known as an "art". In the specification, page 2, beginning with line 79, we find this language:

"While different stitches may be made by means of this needle, by way of illustration one only has been shown in the several figures of the drawings from Figs. 4 to 6, inclusive, and in this particular stitch the method of operation is substantially as follows:"

"Method of operation:" that is, the mode of carrying out the operation of the needle or the mere function of the machine.

1788.

BY THE COURT:

Q125. In other words, you mean that in the specification he has said, "I have got a needle and this is the way my needle functions" or call it operation, and he is trying to base on that a method for repairing fabrics, which only amounts to functioning of his needle, which you call a machine? A. Yes, sir.

Q126. Is that the background of your argument? A. That is specifically what I tried to bring out in my last answer concluded just now.

BY MR. WOOSTER:

Q127. Now, I will refer you to the next step of the claim, which is for "inserting a repairing device having a hook and pivoted latch through a loop formed in the run or raveling." I suppose there is no argument but that Mr. Stephens disclosed a device having a hook and pivoted latch, is that right, Mr. Chapman? A. Absolutely none. 1790

Q128. Now, he calls it a "repairing device." Is the structure any different when he calls it a "repairing device" than the same structure in this Exhibit A-18, which I might call a "making" device? A. I must say, in answer to that question, that, of course, while all the details of construction: the hook, body of the needle, the latch, its shank, are old in the art, nevertheless the proper answer to your question is Yes. As he has disclosed it, there is a handle applied to that shank of the old or fundamental needle, so that only in that respect does the repairing device called for by this claim differ from the ordinary latch needle found in various arts, not only in this, but in knitting machines generally. 1791

Q129. Are you overlooking the fact that you can use a latched needle with the handle on, in knitting goods? A. Oh, no, no, as I understand your question,—I may not have comprehended it entirely, but as I understand your question, it was whether there was any difference between the device disclosed here—

1792 *C. McC. Chapman. Called by Defendants. Direct.*

Mr. Wooster: Suppose you read the question. (Question read).

A. The fact is, all functional features of the repairing device set up in claim 23, are the same as in the latched needle of the circular knitting machine; the latched needle of the Tompkins machine, or rather, not the Tompkins machine, but the Wildman machine, which Mr. Hitchcock referred to, and which I examined in the Thermo factory, that is, the latched needle and the latched needle used of ten times in
1793 other arts.

Q130. What impression have you derived from the testimony of the witnesses for plaintiff, and the statements of counsel for plaintiff as to the meaning of "pivoted latch" in this claim 23?

The Court: Their contention?
Mr. Wooster: Yes.

A. Why, the contention as I see it, is that any latch or device which functions as a latch, is the equivalent of the pivoted latch which is disclosed in the patent in suit.

Q131. Do you find any peculiar functions as-
1794 cribed to the pivoted latch in the patent in suit?
A. No, they are the same old functions.

Q132. I say, do you find any peculiar functions ascribed to the pivoted latch in the patent in suit?
A. Why, there is one function which normally is peculiar, and that is that the latch as it is thrust down toward the point of the hook of the needle operates to press the rung or bar of the run into the hook. There is still another, and that is that the latch, by reason of its magnetism of the same

polarity with the end of the needle, is caused to fly open, but I would not call that a peculiarity, in view of the fact that it is old in the art.

BY THE COURT:

Q133. What is old in the art? A. To cause a pivoted latch to fly open.

Q134. By magnetism? A. Yes, even by magnetism. There are two patents that have been set up in the answer and which I have studied, which show magnetic means for opening the pivoted latch of a reciprocating needle. 1796

BY THE COURT:

Q135. You mean earlier than this? A. Oh, yes, your Honor. So that your Honor will comprehend this all at once, I will say this, that in the device of the patent in suit, there is set up the inherent characteristic of the pivoted latch to fly open by reason of its like polarity with the polarity of the end of the needle. The difference between that and the two prior art structures to which I referred, is that in the machines where the pivoted latched needles are utilized, there is a magnet,—electro magnet, which 1797 causes the latch to fly open at the desired time, so that the strand of the thread may be laid therein by the rotary or other guiding means.

BY MR. WOOSTER:

Q136. In those patents, the needles move up into the magnetic field, so that the latch can open at the proper time? A. Yes. Taking your term "mov-

1798 *C. McC. Chapman. Called by Defendants. Direct.*

ing up into," I will say moves into. As a matter of fact, my recollection is, in both instances the needles whose latches are attracted by the electro magnet, are in a horizontal plane and the latches are caused to rise vertically.

Q137. I call your attention, commencing line 44, page 1, where it says in line 45: "The latch reaches for and grasps the thread to be looped, forces it into the hook," and a statement to the same effect is made in other places, one of which is line 41, page 2; line 103, page 2; line 20, page 3, making mention
1799 of what the inventor thought important on the described function; do you understand what Mr. Stephens was trying to say in those four places? A. Why, yes, I think I do. He intended to convey the idea of means and function of a latch or a device calculated to force one of the strands of the run into the hook at a crucial moment, operating positively for that purpose.

Q138. Would that function be present in a method or device having a pivoted latch, as recited in claim 23? And you may answer qualified if that function is only present when a certain method is used or unqualified, if the function is present, however the
1800 pivoted latched needle be used. A. I have been unable to find in claim 23 anything which would suggest any such operation, after studying that particular mode of operation and considering the text of this patent, I was somewhat struck by the peculiarities of it, and I must say that I made a search, trying to find such a thing, but I have not been able to discover it.

Q139. You mean you did not discover that in the prior art? A. Yes, in the prior art.

Q140. Then, so far as you know, that function of a pivoted latch as described by Mr. Stephens in this patent is new? A. It is new.

Q141. I will ask you right here if Defendants' sliding latch needle has that function? A. Absolutely not.

BY MR. WOOSTER:

Q142. Would it be possible, after interpreting "pivoted" in line 5 of claim 23 as meaning both a pivoted latch, as shown, and some latch, which would catch or grasp the thread end and throw it into the hook, is it possible that that is the kind of an equivalent that Mr. Stephens might be entitled to under the word "pivoted"? A. That would be 1802
my impression. Probably, in view of the disclosure of the function in the specification, the statement of the pivoted latch in the claim would carry that function with it, that is, into the claim. In saying that, I am mindful of the fact that it is not my prerogative to interpret a claim.

BY MR. WOOSTER:

Q143. Now, proceed, go down to where it says, "until the loop has slid back over the end of the latch and beneath the latter"; do you understand what that means? A. May I have that read? 1803

(Q143 read).

A. You are referring to the claim, of course?

Q144. Yes. A. Yes, I understand that quite clearly. It means, and especially in connection with the pivoted latched needle, and particularly the form of needle which is shown in this patent, that it is an essential that the loop which has slid along the shank of the needle, shall pass over the latch, throw it back against the shank of the needle, pass beyond

1804 *C. McC. Chapman. Called by Defendants. Direct.*

the free end of the latch and drop into the groove indicated in the patent at 5. The object of that is to place the loop which has so slid along the shank of the needle in position such that it will infallibly engage the free end of the latch when stress is put upon the loop, as the needle is drawn upwardly.

Q145. Then that phrase, in connection with the pivoted latch, means exactly what it says? A. I cannot conceive of any other meaning for that phrase.

Q146. And if the thread does not get over the end
1805 and beneath the latch, as there stated, does the Stephens patent disclose any way of getting the latch closed when he wants to? A. No, sir, it is impossible to close the latch in its operation, or in the operation of the needle, without first getting the loop back into that groove 5, so that it may get under the free end of the latch and lift and throw the latch over into contact with the pointed hook.

BY THE COURT:

Q147. Especially in view of the magnetism? A. Yes, in view of the magnetism.

1806 BY MR. WOOSTER:

Q148. Is it your opinion that this clause just read about the loop sliding back over the end of the latch and beneath the latter, is a necessary result of having the above described pivoted latch? A. Absolutely essential. The needle can operate in no other way.

Q149. Then you have two clauses in this claim pointing to the plain meaning of pivoted where it said "pivoted", is that right? A. Yes.

Q150. And you also have the additional function described in the specification of throwing the thread into the hook, which is a characteristic, as described by Stephens, of a pivoted latch, is that right? A. Yes, that is correct, forcing the thread into the hook.

Q151. Now, will you say whether in Defendants' Finch needle, the thread goes over the end of the latch and beneath, as stated in Claim 23? A. It does not. It is a physical and mechanical impossibility for that operation to be carried out in the Finch needle.

1808

Q152. And you said that it did not cast the thread into the hook? A. No, sir.

Q153. The Finch latch? A. No, sir, it does not.

Q154. Do you consider it a pivoted latch, as described and explained as to functions by Stephens, the equivalent of a sliding latch as used in Defendants' machine? A. No, sir.

Q155. Will you state your reasons for that? A. I will. As a sliding latch—

Q156. Let me interrupt you a minute; before you answer this question, will you state to me what kind of an equivalent you mean in patent law? A. Equivalent, in patent law, means this: Substantially the same elements arranged in substantially the same way and operating in substantially the same way to produce substantially the same result.

1809

Answering directly the first part of the question, I premise it by saying that originally the nomenclature of the sliding latch was altogether different from the nomenclature of a pivoted latch. When the sliding latch came into being, it was called "an eye closer," or slide. It is only by a figurative and inaccurate use of the term "latch" in the art, that

the sliding latch has come to be called a sliding latch. I conceive, from my study of the art, that the reason for it was very obvious. A pivoted latch had been conceived very much as a crank handle or a movable device on an axis such as a latch to a door, while, the slide latch or eye closer reminded one more or less of a bolt confined to a right line reciprocation in bearings.

Q157. Now, as to the question of equivalency as to pivoted latch and sliding latch. A. The sliding latch of the Finch needle is provided with a notch,
1811 one wall of which is at a right angle to the longitudinal axis of the needle, and the other wall of which is at an acute angle. There are other physical characteristics of the sliding latch of the Finch needle, such as the inclined forward end, which has a very specific purpose and an aperture or recess in that inclined plane at the forward end of the latch. The Finch latch, speaking still of its physical characteristics, is held in the body of the needle in the groove in which it is confined, and in which it moves. The result is that it can have nothing other than a right line reciprocation.

The Stephens latch of the common pivoted type is arranged in a groove or recess on a pivot pin and
1812 extends wholly outside of the body of the needle in contradistinction to the sliding latch of Finch which is almost entirely enclosed by the walls of the needle body, the exception, of course, being obvious, that those physical characteristics which I have just referred to, the needle, and the inclined end, must be exposed, but that is by reason of a portion of the body of the needle being cut away.

Now, as to the operation—

BY MR. GILLIGAN:

Q158. Were you describing the improved Finch needle, or the old one, or both? A. I am speaking of the pivoted latch, merely as the pivoted latch.

Q159. I am talking about the Finch needle. Were you describing the improved Finch needle, or the old Finch needle? A. I am speaking of the Finch needle, as I understand it to be involved in the patent to Finch—

Q160. Is that the old Finch needle? A. I really do not know whether it is old or not.

1814

The Court: Are there two Finch needle patents?

The Witness: The patent which I referred to is the one to Finch 1,674,508, June 19, 1928.

BY MR. WOOSTER:

Q161. Mr. Chapman, I would like you to make your answers fit the Finch patent as shown here, such as the one in the Vanitas machine. A. I have not examined the Vanitas needle. It will only take a second.

1815

The Court: It is now past 5:30. We will adjourn until tomorrow at 2:30 o'clock.

(Adjourned to Friday, March 27, 1930, 2:30 P. M.)

1816 *C. McC. Chapman. Called by Defendants. Direct.*

(After adjournment, March 27, 1930, 2:30 P. M.)

CHARLES McC. CHAPMAN.

DIRECT EXAMINATION BY MR. WOOSTER (Continued):

Q162. Now, Mr. Chapman, will you continue your answer to the question that was asked you yesterday, and which you did not finish? That is the question of equivalency of the sliding latch
1817 needle and the pivoted latched needle. A. In the plaintiff's structure, there is shown and described a pivoted latch as an essential feature of the needle or device used in mending runs.

The pivoted latch is so constructed or treated as to make it normally fly open and remain open during the forward thrust of the needle. As distinguished from this, the defendant's structure discloses a sliding latch, which normally is closed and must necessarily be closed in order to start its functional operation.

In the plaintiff's structure, as the needle is thrust forward, the loop which has been caught on the
1818 hook of the needle slides along the length of the pivoted latch and presses it backwardly against the body of the needle, thus traveling the whole length of the latch.

In the defendant's structure, the sliding latch on the forward thrust of the needle in its initial movement is forced backwardly by the loop which has been taken thereon and which is at rest in the notch 4 against the shoulder 16. This establishes the open condition of the eye of the needle. In the plaintiff's structure, after the loop which has forced the pivoted latch backwardly has passed over the

end of said latch, drops into a groove indicated at 5 in the Stephens patent in suit and there remains until the needle shall have been drawn backwardly, at which time the loop travels along the latch under the latch, throws it around on its pivot, and drives the latch forwardly in opposition to the magnetism and throws it against the next succeeding thread or rung of the ladder, and according to the specification of the Stephens patent, forces said thread into the hook of the needle.

As distinguished from this, in the defendant's structure the backward stroke of the needle causes 1820
the forward travel of the sliding latch. This travel, however, does not occur until after the loop has climbed a predetermined distance up the inclined plane in advance of the shoulder 16.

Following this condition the latch is pushed forwardly into contact with the point of the hook, which latter is buried in the recess indicated at 5 in the Finch patent No. 1,674,508, thus closing the eye of the needle.

In the plaintiff's structure it is essential that the loop which actuates the latch in both directions shall not remain on the latch except for the purposes of shifting the latch one way or the other.

As distinguished from this in the defendant's 1821
structure, it is an absolute essential that the loop shall remain in the notch of the latch, and always in contact with the latch during the forward movement as well as during the backward movement, excepting under the condition when the latch or loop is in the eye of the needle just in advance of the incline from the end which is indicated in Fig. 3 in the Finch drawing, of the patent just referred to.

As the needle is thrust forward in the plaintiff's structure, the latch is wide open due to its magnetic characteristics.

In the defendants' structure, as the needle is thrust forward, the latch is first opened by the loop transversing the inclined plane 3 of the said Finch patent, and subsequently is driven back to its limit by the loop, after which the loop enters the notch 4 and engages the shoulder 16 of the said Finch patent, which latter limits the movement of the loop and holds it in that condition, and on the other hand
1823 the shoulder acts as a stop or gauge preventing further forward movement of the needle, and at the same time positioning the hook of the needle directly under the next cross thread which is to be engaged.

There is no equivalent for this particular mode of operation nor is there any suggestion in the Stephens patent or the plaintiff's patent, of a stop or gauge for the purpose of limiting the forward thrust of the needle.

In plaintiff's structure, the old pivoted latch of the prior art performs all the old functions in the same prior art way since in the prior art in the use of a pivoted latch needle, it is a fundamental
1824 essential that the latch shall be open as a preliminary to the forward thrust of the needle in concatenating the thread.

As distinguished from this in the defendants' structure, which is a preliminary to the forward thrust of the needle, the sliding latch closes the eye of the needle and must first be opened by a thread or a loop sliding over the point of the needle, and the latch and across the latch at its front inclined edge or end into the notch in which the thread or loop is ultimately lodged. With continued forward

movement after engagement of the loop with the shoulder of the needle, the slide is opened. This, in the defendants' structure, makes a radical difference both in preparation for operation, and in operation of the needle.

In the plaintiff's structure the groove or recess indicated at 5 in the Stephens patent, has the usual function of the prior art which is to enable the loop, passing over the latch, to drop into it and thus put it in position at the free end of the latch for the purpose of lifting the latter, traveling over the back of the latch and tending to close the latch, against the point of the hook. 1826

As I just stated, this is a common feature of all, or most all of the prior art structures of the pivoted latch type.

As distinguished from this in the defendant's structure, the loop remains in contact with the latch holding it in its open position and retarding it in its forward thrust momentarily, and being opened by a succeeding loop. Preliminarily, however, the loop traverses the beveled or inclined forward end of the latch so as to open the eye of the needle, and allow the loop to pass the hook of the needle, and then passes over the latch and drops into the notch. 1827

And this is a radical difference in mode of operation as well as in function. However, as before stated, the structure of the latch and its mode of operation plus the absolute limitation and gauge upon the movement of the needle, has also, an additional very advantageous function of stopping the action of the needle just at the right point after being thrust through the fabric for engagement of the hook with the next succeeding strand of thread.

1828 *C. McC. Chapman. Called by Defendants. Direct.*

Q163. I would like to interrupt you just a moment, you have a number of other points to bring out about nonequivalence? A. Yes.

Q164. I would like to ask you if Mr. Stephens, in his patent, shows any means like a notch, or anything else, that positively limits the forward stroke? A. He does not.

Q165. You say that in the Finch needle, that forward stroke is positively limited by the latch reaching the end of the sliding movement, is that right? A. Yes, sir.

1829 Q166. And that the operator, if the operator does not feel the sliding latch hit the abutment or feel the thread tension and still continues the forward punch, he breaks the thread or pushes it out away and on the back of the shank of the Finch needle? A. The tendency would be to break the thread or force the loop which is in the notch back along the shank of the latch and possibly on to the shank of the needle.

Q167. If that does not happen, the thread will break? A. Yes, sir.

BY THE COURT:

1830 Q168. That is perpendicular as to the face it presents toward the thread, and with the needle, when the needle was in the direction, in that direction, it would have to go in a straight line in order to go over the shank, and that would mean more than likely it would break at that point? A. Yes, sir.

BY MR. WOOSTER:

Q169. Is that what Miss Gibson, as you saw Miss Gibson and Mr. Stephens operating, did you observe

whether the loop went off the back end of the latch when opened, and went into that notch 5 in the Stephens needle? A. I do not see how it could escape the notch, unless it traveled so far back as to run on the shank of the needle.

Q170. And there is nothing in the Stephens disclosure to prevent that? A. Absolutely nothing.

Q171. Do you think that is the reason why some of the Stephens operators took so long to learn the Stelos commercial method? A. It may be. Of course, we must not forget the personal equation of the operators.

1832

Q172. What is your next step as to this stopping or gauge action in the Finch needle facilitating the operation of the Finch needle? A. It is a highly advantageous feature, for the reason that it shortens the stroke of the needle, reduces vibration of the needle, and by just that much increases or enables an increase in the speed of the needle, adapting it particularly to power drive and manipulation.

BY THE COURT:

Q173. Why does it reduce vibration? A. Every vibration or every reciprocation has two movements, and two stops, one at each end of the movement. If that movement is short, the vibration is necessarily reduced.

1833

BY MR. WOOSTER:

Q174. Can you give us a common illustration of that principle in automobile engines? A. That is the common trend of today. Under the old structures of four cycle engines, the piston stroke was very long, and as a result, greatly increased vibration. The tendency today—

1834 *C. McC. Chapman. Called by Defendants. Direct.*

Q175. What effect did it have on the speed? A. It reduced the speed—held it to lower limits.

Q176. Just state what general principle of design in motors for high speed automobiles has been adopted? A. The tendency now is, and engines are designed for the purpose of shortening the stroke of the piston, reducing vibration and therefore increasing speed.

By Mr. Wooster:

1835 Q178. Will you go on with your answer?

The Witness: I think that the answer, in a measure, to your Honor's question is the well known law of inertia, which is, that a body started into action in a direction will continue in that direction until—

The Court: Something stops it? A. Something stops it.

The Court: It may be friction?

The Witness: Yes.

Q179. There is always friction or something traumatic? A. Yes, sir. Following the line of
1836 thought with reference to the Stephens needle having no means by which—

By Mr. Wooster:

Q180. Now, will you proceed? A. Again with reference to the stop or gauge, which is not present in the plaintiff's structure, as shown in the Stephens patent, there is only one thing, which, by any possibility, could act as a limitation of the forward stroke of the needle, and that is the guard indicated at 6 in the Stephens patent, which paral-

lels the body of the needle. The guard is supposed to be flexible and capable of being pressed apart from the body of the needle, adjacent to the hook of the needle and every time a forward thrust is made of the Stephens needle; the strand of thread or the loop goes between the guard and the body of the needle. There is nothing to stop that loop from traveling after it has left the free end of the latch when the latch is thrown back, as your Honor now has it, from going clear up to the point where the friction will become so great between the guard and the body of the needle as to probably pinch it and stop it. 1838

BY THE COURT:

Q181. That means that you could plunge this needle, the Stephens type of needle, as deep into the fabric as you wanted to plunge it until some force exerted itself, which consciously held you up, whereas in the other one, you have something that stops the depth of that plunge in the very early stage of it, is not that true? A. Yes, sir. That is the crucial stage in the forward thrust of the defendant's needle, because it brings the hook of the needle directly under the next cross bar. 1839

The Court: Oh, yes.

The Witness (Continuing): That is not true of the plaintiff's needle, since the movement of the latter is dependent entirely upon the thrust given the needle by the operator and that thrust may be different in various strokes and with various operators, all with the tendency of throwing the needle farther forward and under more bars and with tendency also to

entangle the forward bars with the latch, which necessarily follows the device.

In the plaintiff's structure, the movement of the needle must necessarily be at least as long as the length of the latch plus the distance of its pivotal point from the point of the needle or hook.

I should say under normal conditions that that distance or length of stroke is at least twice as great as in the defendant's structure, and that distance will vary, of course, with the
1841 length of the pivoted latch of the plaintiff's structure.

By Mr. Wooster:

Q182. Mr. Chapman, have you got any fine measuring instruments by which you can give us a more definite statment than you have given as to those distances? A. I haven't it here, but I plotted—you mean with reference to what?

Q183. The distance in the Stephens needle, the length of latch plus distance, from pivot to hook, as compared with the Finch latch. A. No, but I think that might vary anyway, according to the length
1842 of the latch. A short latch, of course, would mean a shorter necessary thrust of the needle; a long latch will mean a longer necessary thrust of the needle. As distinguished from that—

Q184. Can you not at this point, take the exhibit, the Stephens needle, and give us some idea of the length of that latch? A. Yes, if you have got it.

Q185. And its distance to the hook and then give us a similar idea of the distance of the movement of the Finch latch. A. Mr. Wooster, I don't know that these two sets of drawings are on the same scale.

BY MR. WOOSTER:

Q187. Go ahead. A. I have just measured the length of the latch and the distance of this pivot from the point of the needle on Defendant's Exhibit No. 3. That is the Stephens needle. The length of the latch is approximately 3/16 of an inch, the distance of the pivoted point of the latch to the end of the needle is approximately 4/16 of an inch.

Q188. How is that? A. The length of the latch is approximately 3/16 of an inch. 1844

Q189. All right. A. The distance of the pivot of the latch to the end of the needle is approximately 4/16 of an inch. I have also just examined the needle which is taken from the machine of Defendants' Exhibit Y-63, and find the distance between the end of the hook and the front end of the latch is 2/16 of an inch, approximately.

BY MR. GILLIGAN:

Q190. Is there a difference between the old Finch needle and the new one? A. As I said before, it is a question of dimensions or size in accordance with the character of work you are doing. In other 1845 words, whether you are using the needle for fine work or for coarse work. In the defendants' needle, you would use a proportion of parts such as to enable the coarse thread to get under the hook between the front end of the latch and its point, and that distance would vary according to the diameter of the yarn or thread.

Q191. From 2/16 to what? A. That I could not say without making another measurement of a larger needle. As I understand it, this needle of

the defendant, which the defendants are using almost exclusively is for hosiery work of rather sheer gauge.

BY THE COURT:

Q192. What is your definition of equivalent? A. Substantially the same elements arranged or assembled in substantially the same way and operating in substantially the same way to produce substantially the same result of function.

1847 Here you see that the operation is not in the same way, the operation is radically different. The method of operation is parallel as to the position of the needle and run in the operation of the defendants' method.

You see that the needle is essentially a part of the method and in this case it really involves, to my mind, the method of manufacture of the Finch needle.

BY THE COURT:

Q193. That was just what I was going to ask you. Is it not a fact that the needle is an essential
1848 part of the method, and that this case really involves a question of the Finch needle vis a vis the Stephens needle, and that due to the fact that the needles are different, that the method itself would necessarily be different, assuming those facts to be so, and that you could not use the Finch needle in the way you use the Stephens needle, due to the difference in construction of the two needles. A. Yes, sir, that is exactly what I think.

Q194. Assuming that the method is proper under the plaintiff's patent, and under your definition of

equivalent; everything is the same except the needle and the method of operating the needle? A. No, the needle, of course, is radically different.

Q195. You mean the motion of the needles are unquestionably different? A. Yes, sir.

Q196. That motion is due to the structure of the needle? A. It is a practical result of the structure.

BY MR. WOOSTER:

Q197. That is your contention, is it not? A. Yes, sir.

1850

BY THE COURT:

Q198. Then it pulls down, assuming this is a method and not an aggregation, assuming this is a method, the real difference is in the instrument used and the result of the instrument used is also the differentiation of method on account of the construction of the needle which causes a difference in the method? A. Yes, sir.

In addition to the differences which I have just outlined between the old pivoted latch needle and the old art sliding latch needle, there are a number of changes, advantages and disadvantages set out 1851 in the earliest of the patents which have been brought to your Honor's attention, which are U. S. Patents. I do not refer to the Salisbury Patent. The first one is the Hilbert Patent No. 6025. In connection with that patent which I have before me, and which I think an improvement upon the original and fundamental patent of Matthew Townsend in 1847 in connection with that it is my thought that the plaintiff's needle is the direct descendant of that particular patent, of Hilbert in 1849. Per-

haps it may be of the Matthew Townsend patent. While the defendants' structure is the direct descendant of the patent of Fifield No. 51577 of 1865.

In those patents, many differences and advantages and objections are set out, the objections being of the pivoted latch needle and the advantages of the sliding latch needle and it is also true of the patent to Carey No. 47488, which is a representation of the spring beard needle with a pivoted latch, which was testified to and is now Exhibit AA, that is the Carey Patent of 1865, which just
1853 precedes the Fifield patent.

This particular patent shows in Fig. 1 the spring beard needle, which is a very long needle and in Fig. 2 is shown the pivoted latch needle, and the old art is shown there; in Fig. 3, the combination of the two. That was definitely a combination of the two. That is to say, as I understood it. Its advantages are set out in them by combining the two. A reduction in the size of the hook was accomplished, and this advantage of the pivoted latch, that is to say, whatever advantage of the pivoted latch that it may have had in the art that was also accumulated in this particular instrument or nee-
1854 dle. The specifications says "That by my improvement, the latch needle which has heretofore been used for making coarse work is adapted for making the very best kind of knitted goods and produces a fine, even and firm fabric".

That leads me to the further large and elemental difference between the plaintiff's needle and the defendants' needle which is: Due to the pivoted latch and the necessity for having to go through the structure forward and backward sufficiently to carry the latch below the fabric and throw the latch back and then throw the latch forward the result

has been shown to be that the function accomplished, or the result of the work is irregular, and I noticed in the plaintiff's demonstration the other day that there was reference made after the demonstration to the use of the instrument for the purpose of smoothing out and making a regular or normally mended run. That is, to make it correspond in appearance with the remainder of the hosiery. As distinguished from that, you get away from all these difficulties in the working of this particular instrument, the sliding latch needle, because it works with absolute, as you have seen, and 1856
so far as I have been able to determine, uniformity and regularity and the work requires no further treatment because the movement is always the same, and the work is always the same, it operates with absolutely the same degree of regularity, and produces work which is far better, more regular and in every way a decided improvement upon the other method, especially in so far as having greater speed is concerned.

BY THE COURT:

Q199. If operated by hand, would not the sliding 1857
needle be just about the same as the pivoted latch needle, because in working by hand necessarily you are not going to get as regular results as you would by machine work. A. It would make no difference, in my opinion, whether the defendants' sliding latch needle is operated by hand or by machinery, because of the fact that it contains what I have referred to as a fixed stop or catch which limits the thrust of the needle through the work and produces a regular and uniform result in the finished product. It goes in and out of the fabric in the same way and it

does not go beyond a certain point before it comes back and picks up the next rung of the ladder. That produces a very regular work, and I understand that is highly essential on sheer work..

There appears to me to be as the fundamental difference between the plaintiff's structure and mode of operation, and the defendants' structure and mode of operation in that the defendants' structure operates in a perfect right line, and is confined to that right line reciprocation by reason of the inherent structure of the needle that causes the
1859 latch to be held in the structure, that is, the tubular body of the needle.

As distinguished from the plaintiff's structure as disclosed in the patent, (which as I understand it, involves a gyratory movement as I pointed out yesterday, consisting of a forward thrust, a backward pull, upward movement, and a curving movement, in two different directions, the first curving movement being to extend the shank of the needle laterally to the run, and then bring the shank of the needle back into position which is approximately parallel with the run,) the defendants' needle differs again quite materially, as I see it, from the
1860 Stephens method of operation, since the latter necessarily is a sort of gyratory motion, compounded of the five movements as to which I have just referred while the defendants' operation or method is the result of the confinement of the sliding latch in the body of the needle, and its inability to move in any other direction, and also as the result of the angular shoulder indicated in the Finch patent 1,674,508, which is at a right angle to the longitudinal axis of both the latch and the needle. That structure necessarily confines the operation of the needle to a right line reciprocation and also

compels the disposition of the needle in parallelism with the run and vertically disposed relatively thereto.

Q200. How many different ways do you know of for making a pivoted latch open? A. One is by medium of the loops or strands of thread, either in making the fabric or in mending it; another is by what they call mechanical latch openers, another is by magnetism, and aside from—

Q201. Gravity? A. Gravity.

Q202. Gravity in the Gearhart knitting machine? A. Aside from the natural drop of the needle in the 1862
knitting machines, which is by gravity; they fall back to the normal open position.

Q203. Is self-opening of a pivoted latch a desirable function, whether you want to make goods with it or reknit with it? A. Oh, I think it is. I think it is quite an essential thing and it is accomplished in the various ways that I have stated, throughout the art.

Q204. That is to keep the point of the latch from stabbing or breaking the thread on the forward stroke? A. What they call splitting the yarn or thread.

Q205. Has the Finch or defendant's latch any 1863
end, as that word means in claim 23 in suit? A. No. Unless you choose to call the shoulder or gauge which is the fixed spot or gauge for limiting the movement of the needle in the work, but as compared with a pivoted latch, it has no end.

Q206. In the claim in suit, it says the loop goes over the end and beneath the latch, does it not? A. It does.

Q207. At any time, do you find any loop going over the end and beneath anything in the Finch latch or in defendant's machine? A. No, sir, there

is no such operation or possibility in the defendant's machine.

Q208. The loop is always on the latch in defendant's machine. A. Always on the latch surrounding the body of the needle.

Q209. And at no time is the loop wholly on the shank or body of the needle, as it is in the Stephens patent? A. It is not.

Q210. And the Finch latch is actuated by the thread in both directions, isn't it? A. It is.

Q211. Is that true of the Stephens needle? A.
1865 It is not. In the Stephens needle, it is operated in one direction only by the loop or thread.

Q212. Is interchangeability of parts ever a criterion for testing equivalency? A. It is.

Q213. If you test the defendant's needle and the Stephens needle by interchangeability of parts, do you find any? A. I do not.

Q214. Is the pivot pin in the Stephens pivoted latch needle a part which is done away with in the Finch sliding latch needle? A. It is completely eliminated, and that pivotal pin in the latch needle is open to a number of objections.

Q215. Can the Finch latch or the latch in de-
1866 fendant's needle be opened by magnetism? A. I think it cannot.

Q216. Have you not tried it? A. It has been tried in my presence and it has not been accomplished.

Q217. Of course, you are not sure you used the secret method of magnetizing which the plaintiff would not disclose the other day. A. The methods used were the well known and obvious ways of magnetizing metal instruments.

Q218. Is it, in your judgment, possible that if the secret method of magnetizing of plaintiff be applied

to defendant's needle, you might have made the latch open? A. I do not think so. I do not see how it could.

By Mr. Wooster:

Q219. You tried to give the hook and the sliding latch the same polarity, did you not? A. Yes.

Q220. Will you say how you did it? A. By rubbing a horseshoe magnet over the different parts of the needle.

Q221. That is the usual and well known way of magnetizing? A. Yes, I understand that is the usual way. 1868

Q222. If the defendant's needle were made of non-magnetic material, would it change its function in any way? A. I do not see how it could.

Q223. If you made the Stephens needle of non-magnetic material, you could not magnetize it so as to make it self-opening, could you? A. You could not. The Stephens needle would not operate according to the disclosure of the Stephens patent.

Q223. Is the interchangeability of use a possible criterion for testing equivalency in a case such as this? A. Interchangeability of use?

Q224. I mean by that, when you put the Stephens needle in the Vanitas machine, would you have the same function and mode of operation as you have with the regular defendant's needle? A. No. 1869

Q225. Have you tried that? A. No, but I can say that it would be an absolute impossibility.

Q226. You would have to change the stroke in the Vanitas machinery? A. Entirely.

Q227. That would mean changing the construction of the sheath and actuating wire? A. You would be compelled to entirely destroy, as I see it, the normal characteristics of the defendant's needle.

1870

Q228. You do not think a Stephens needle like the exhibit Stephens needle could be put in the chuck of the defendant's exhibit, Vanitas machine, and do anything? A. I don't think so. I saw one in operation that was supposed to be the Stephens structure, and it would not operate the way defendant's structure operates.

Q229. Taking another view of equivalency of pivoted latch and sliding latch needles, could you take all the pivoted latch needles, for example, out of the Gearhart machine, and put sliding latch needles

1871

in and make that machine knit? A. No, oh, no, because—

Q230. You would have to do a lot of things to it, wouldn't you? A. That is a hard question to answer offhand, but I would say, on general principles, it could not be done.

Q231. If the Finch needle were intended to operate laterally of the run in the same general lateral position, as demonstrated by Miss Gibson and Mr. Stephens, would the notch and the form of the forward inclined end of defendant's latch be the same as it is now? A. Oh, no, you would have to make quite a change in the form of the shoulder

1872

and the inclined plane, just in advance of it, as well as the beveled end of the slide.

Q232. And you would make the notch parallel to the thread, would you not? A. That would be the effort, and that would be the necessity, as I see it, for the operation of defendant's needle.

Q233. And that diagonal direction of notch would be one way, if it were a left handed needle, and the other way, if it were a right handed needle, would it not? A. That is correct.

Q234. Will you take the Stephens patent and tell me if you have measured the angles shown in

Figs. 4, 5 and 6, meaning the angles of the needle axis to the direction of the run? A. I have.

Q235. What are they, approximately? A. Approximately in Fig. 4, the needle is shown as in a position 6 degrees laterally in the horizontal plane from a line drawn through the center of the run.

Q236. And Fig. 5? A. In Fig. 5, the needle is shown as in a position of approximately 66 degrees laterally relatively to the run.

Q237. And Fig. 6? A. In Fig. 6, the needle is shown at approximately 74 degrees laterally relatively to the median line of the run.

1874

Q238. So you have a progressive change in the horizontal angle in those three positions? A. Yes, sir.

Q239. Would you describe on the record and show the court how you measure those angles with this little protractor?

The Court: I am very familiar with those things.

The Witness: First I put the median line directly through all the figures, through the middle of the run, then I laid the longitudinal line on the protractor directly over that median line in the figure; then I carried out the axial line of the needle with the scale, on the periphery.

1875

The Court: I see, then you slide this on with the other two figures?

The Witness: Yes.

BY MR. WOOSTER:

Q240. Those are horizontal angles, as shown in the patent, are they not? A. Entirely.

1876 *C. McC. Chapman. Called by Defendants. Direct.*

Q241. Does the patent show any vertical angle? A. No, sir, it does not.

The Court: How could it?

The Witness: I will show you, your Honor, when that sort of structure or mode of operation is intended, the drawings are made quite similar to the drawings of the British patent to Ortega, 18,730 of May 23, 1922,—the first three figures thereof.

The Court: You do not mean the first three
1877 figures, you mean the 8th, 9th and 10th figures.

The Witness: That is it, thank you.

Q242. You understand the contention of plaintiff now is that the undisclosed vertical angle in the Stephens patent is the one which they meant the word "laterally" in the claim to cover? A. Why, no, I do not so understand it. I understand the word "laterally" as in the claim and as in the patent, to mean the shift to one side relatively to the run, as shown by the successive figures 4, 5 and 6, in the Stephens patent.

Q243. And the plaintiff now contends that the
1878 vertical angle may be almost anything up to 90 degrees? A. That is the way I understand his contention at the present time.

Q244. And that vertical angle may be in any plane from, say, the angles that you have just measured, to around saying that the plane is coincident with the run, is that right? A. That is right, yes.

Q245. Do you find anywhere in the disclosure or text of the Stephens patent that at the time he wrote it, he saw any virtue in one vertical angle,

say, a small one, over the large one which he now claims? A. None whatever. My experience with laying out a foundation for patents of this character, leads inevitably to the fact that the needles or needle in the Stephens patent was laid on the fabric practically on its surface and the figures drawn accordingly.

Q246. Do you find anything in the Stephens patent that indicates that when he wrote it, he had in mind a low and a small vertical angle? A. Yes, I find there is a very definite statement in the specification of the Stephens patent with reference 1880
to the notch indicated at 5 in the shank of the needle.

Q247. Will you read the statement? A. The reference is, beginning line 45, page 2, as follows:

> "A notch or recess 5, is formed in the needle, opposite the free end of the latch or bridge, when the latter is wide open; as viewed in Fig. 1, the purpose of which is to reduce the thickness at this particular point with the needle adapted more nearly to the thickness of thread or yarn and the size of loop and more particularly for the purpose of reducing the required 1881
> movement of the needle in the operation to an extent corresponding to the depth of the notch or recess."

There is also another reference on page 3, beginning at line 30, which is as follows:

> "The clearance afforded by the notch or recess 5 makes it possible to hold the needle down closer to the fabric, and greatly reduces the thickness of the combined needle and latch as

1882 *C. McC. Chapman. Called by Defendants. Direct.*

well illustrated in Fig. 1, which is very desirable during the operation of knitting and repairing, as it lessens the pull and tension upon the threads and the loop."

Q248. Now, is that statement, "to hold the needle down closer to the fabric by reason of the notch 5" consistent with the claim and demonstration made here by plaintiff, where the vertical angle was perhaps from 50 to 70 degrees? A. It is not, and everything in the specification, including the drawings, and the descriptive matter indicate that it
1883 was the intention of the applicant and patentee to demonstrate a method wherein the needle would be as close as possible to the surface of the material operated upon and laterally extended to the right of Figs. 4, 5 and 6 and particularly with reference to the run.

Q249. And would that holding of the needle close to the fabric, as you have just stated, be consistent or inconsistent with the varying horizontal angles shown in Figs. 4, 5 and 6? A. Quite consistent.

By Mr. Wooster:

1884 Q251. Is there anything in this patent in suit to disclose or indicate an operation of the needle out or substantially out of the plane of the fabric, other than a low angle, sufficient to get it through and carry out that sliding function and keeping the needle shank close to the goods, as just mentioned? A. There is not.

The Court: Do you suppose by Monday you could write Claim 23, as you understand would fairly embody what you understand to be plaintiff's contention?

The Witness: I think I can, yes, sir.

Q252. So that we can parallel-column it? A. Yes, sir.

Q253. Suppose you approach it this way. You heard this evidence and you understand what the plaintiff's contention to be? A. Yes, sir.

Q254. If you wanted to put in a claim that would support that and be a fair basis for it, in drawing a patent, could you do that? A. Yes, sir. I think it would be also helpful to your Honor, if I may suggest it, to take, as I have actually done, the description in the specification in the mode of operation and column that with reference to the present claim, and then such a claim as you have just suggested; is that too much? 1886

The Court: Not a bit. You would have to do that in some visual way. I think that would be very interesting, because you are always dropping loops in your thoughts, in a matter like this, but if you hook them up once for all, you are in a fair way to get a thorough understanding of them.

The Witness: I will do that.

By Mr. Wooster:

1887

Q255. Will you look at Defendant's Exhibit A-22 on the photostat, page 23, under the title, "Mending Broken Stitches", and read that into the record and then state if you understand it, and what further instruction, if any, would be needed to do what that says? A. I have read the instructions of the exhibit referred to, which I understand to be a reference to the old Branson household knitting machine, and I think I understand it, and it is as follows:

1888 *C. McC. Chapman. Called by Defendants. Direct.*

"MENDING BROKEN STITCHES."

"This is done with one of the needles of the machine, either in the machine or after the work is out. The needle is used as a crochet-needle. You hook it in the dropped stitch and push it far enough through to bring the stitch below the latch; then draw it back, catching the next cross-thread above in the hook above the latch; continue to draw the needle back until a new stitch is formed; proceed in this way
1889 until all the dropped stitches are knit in. If the mending is done out of the machine, you will tie the dropped stitch with a short piece of yarn and draw the ends inside of the web."

This method is the method which is usually carried out in connection with all of the present manufacturing machines, that is, machines for knitting fabrics, whether it be on the flat bed or the cylinder machine.

Oftentimes, during the operation of those machines a needle will break, or a knot will occur in the thread, causing the thread to break, and other accidents may occur, which will bring about a run
1890 in the material, as it is being knitted. It is frequently the object of the attendants to reloop the fabric whenever they detect the run, so as not to allow it to go too far. In doing that, they take the ordinary needle such as is then in use in the machine, stop the machine and insert the needle practically at a right angle to the fabric, into the latter and then they reloop the runs or the bars of the run in simulation of the knitting which has been carried out during the process. When they get it to the top of the run, which is adjacent to the needles or the

needle where the accident or fault occurred, they reloop the last loop of the run over onto the new needle which has been placed in the machine.

Now, if the material is allowed to be taken out of the machine, the same process will be carried out by suitably stretching the material, and the run will be relooped, but instead of hooking it upon the needle as in the machine, they will utilize some sort of tacking means, which is also a common thing in sewing machines, when buttonholes are worked, and you get around to the end of the buttonhole, at the square end and then cause the needle to vibrate laterally so as to produce a tack which will hold the thread and prevent them from being raveled around the buttonhole. 1892

BY MR. WOOSTER:

I have here, which I would like to offer as an exhibit, a certified copy of a copyright, registered December 8th, 1905, for J. E. Gearhart & Son AXXc No. 133620, and annexed to it under the certificate of the copyright office, the same text as taken from their file.

(Marked Defendant's Exhibit II.) 1893

I also offer certified copy of Canadian copyright, Auto Knitter Hosiery Company, 18th Edition, Copyrighted in Canada 24th of February, 1923, another one, the 8th edition, copyrighted December 13, 1915, and U. S. copyright of the 12th edition of the same book, AXXc No. 507097, registered October 18, 1918.

(Marked Defendants' Exhibits JJ, KK and LL, respectively.)

(Adjourned to March 30, 1931; 10:30 A. M.)

1894 *C. McC. Chapman. Called by Defendants. Direct.*

After adjournment, March 30, 1931, 10:30 A. M.

CHARLES McC. CHAPMAN, resumed:

DIRECT EXAMINATION BY MR. WOOSTER (Continued):

Mr. Wooster: In connection with Exhibit LL, copyright certificate of Auto-Knitter Instruction Book, 12th Edition, I would like to offer the book itself with particular reference
1895 to instructions for picking up slipped stitches on page 20; and also the instructions for picking up ribbed stitches on page 32, as our Exhibit MM.

(Marked Defendant's Exhibit MM.)

I also offer as one exhibit, a small frame.

The Court: What you call the harp?

Mr. Wooster: The harp having threads placed thereon heretofore used in demonstration, and also a large sized pivoted latch needle, and a large sized sliding latch Finch needle. That will be our Exhibit NN.

(Marked Defendants' Exhibit NN.)

1896

Q256. Will you refer to your testimony, at about Q193, where the intent of this question was to ascertain for the record the total stroke required of the Finch needle in comparison with the total stroke required of the Stephens needle. As I understand the figures of the answer, you only gave the stroke of the Finch sliding latch needle. A. Yes. I recall that that is all I did give with reference to the Finch needle. May I have that Finch needle?

The Court: That is the little needle.

Mr. Wooster: It is on the machine. The witness takes Finch needle from Exhibit Y-63. Proceed.

BY THE COURT:

Q257. Will this do you any good? A. I think it might.

Q258. I do not know whether this is close enough to it. It may be. I can show you how to operate it. You may get it closer by bending this thing here. 1898
You can measure that with this. That is the reason I brought it down. I have a scale here. A. All right. My recollection is this that I gave the figure 2/16 of an inch for the movement of the latch of the defendants' needle, and those figures should be added to, covering the length of the hook, from its point, this is hard to hold; it is hard to hold this thing.

Q259. Do you want me to hold that magnifying glass for you? A. Thank you, I think I can get it this way, Judge.

BY MR. WOOSTER:

1899

Q260. In that connection, in the answer of the Hosiery Motor-Mend Corporation, there was annexed to the answer as a physical exhibit, a section of needle with the sliding latch needle in it marked for identification in the answer Exhibit B, which has not been offered here, but which I have here ready to offer, and undoubtedly that is what Mr. Gilligan mentions as the old Finch needle, because the new one that the witness has now, and is now referring to, had not been made at that time.

1900 *C. McC. Chapman. Called by Defendants. Direct.*

Mr. Wooster: I offer this section of the needle sheath with end piece and needle therein, as Defendants' Exhibit OO, same being referred to in the original answer of Hosiery Motor-Mend Corporation as Defendants' Exhibit B.

(Marked Defendants' Exhibit OO).

BY MR. WOOSTER:

Q261. Mr. Chapman, you may answer as to both of these exhibits, in one answer. What I want is the stroke in the present needle, which means the
1901 length of travel of the latch plus, as I take it, the length of the hook. A. Yes, sir.

Q262. And also of Exhibit OO just referred to. A. The needle which I have first examined, and which was taken from the Defendants' machine, as I understand it, is provided with a clearance slot apparently. The length of this hook, of the hook of that needle, is a little over 3/16 of an inch as I measure it. I believe that the stroke of the needle, as a whole, is dependent upon the length of that hook. The actual stroke of the needle might be a little bit more, but the object is, as I understand it, to drive the needle downwardly through the
1902 fabric to an extent such that the open hook will be directly below the next succeeding bar or thread or rung of the ladder.

Now, in Defendants' Exhibit OO.

BY THE COURT:

Q263. Do you want this machine? A. Your Honor I think they are just about the same, as near as I can make it. The length of the hook seems to me about the same as in the preceding exhibit, and

I would say that the stroke of the needle is likewise approximately the same.

BY MR. WOOSTER:

Q264. I did not mean the stroke of the needle. I want to get the stroke of the latch.

THE COURT:

I thought you meant the stroke of the needle. A. That is what I understood you to mean also.

1904

The Court: At any rate, you can get what you want by the stroke of the needle. I thought that is what you criticized in the previous answer. The movement of the latch is what you want?

The Witness: I gave that as about 3/16 of an inch. What is it you want now, the movement of the latch?

Mr. Wooster: Movement of the latch, also the length of the hook. A. I have given that this morning.

The Court: 3/16 of an inch; the stroke of the needle is dependent on the hook; now you say 1905 you don't want the stroke of the needle.

The Witness: In other words, the movement of the latch within the defendants' needle is limited by the back stop and the point of the hook, but that movement takes place while the needle is being projected or retracted through and from the fabric and the limitations are such as to bring the needle in its forward stroke just under the next succeeding bar or rung of the ladder.

1906 *C. McC. Chapman. Called by Defendants. Direct.*

BY MR. WOOSTER:

Q265. In reading from the minutes, I understood you to say, in answer to Question 235, typewritten page 967, and succeeding questions 236 and 237, that you may have made an error in measuring those angles on Figs. 4, 5 and 6 in the drawing; have you reread those answers, as given? A. I have read the answers and find that there was an error in the first measurement given.

Q266. It says here 6 degrees laterally in the horizontal plane, what should it be? A. It should be
1907 14 degrees. The others are approximately correct.

BY THE COURT:

Q267. No. 1? A. That was in Fig. 4.
Q268. Fig. 4, I mean? A. Yes, sir.

BY MR. WOOSTER:

Q269. I show you a rough model showing a representation of a ladder and some angles and a swinging representation of a needle, does that chart on that model graduate up to 90 degrees show what you
1908 have been talking about as the horizontal angles, as shown in the Stephens patent? A. Yes.

Q270. And the vertical angle is shown how, in the Stephens patent? A. The vertical angle, as I understand it, is not shown at all. There are, however, possibilities of a vertical angle being produced, limited by the loop which surrounds the shank of the needle, as the loop slides backwardly on the needle shank and drops into the groove in the needle shank indicated by 5 in the Stephens patent.

BY THE COURT:

Q271. By "vertical angle," you mean at right angles with the line of the run, do you? A. By vertical angle I mean—

Q272. You mean above the plane of the run? A. Above the plane.

BY MR. WOOSTER:

Q273. The angle to the plane? A. It could be in the extreme perpendicular or normal to the surface of the fabric. 1910

Q274. In defendant's method, as shown by Miss Adamcik, what was the horizontal angle to the run? A. Very small, as I recall it. In the demonstration, it was almost parallel with the run.

Q275. Then a horizontal angle of zero? A. Yes, it might have been zero.

Q276. And her vertical angle was approximately what? A. The Vertical angle?

Q277. Her vertical angle. A. I should say it was between 50 and 60 degrees, the vertical angle, although that may have varied slightly from time to time.

Q278. What is your understanding as to the contention of plaintiff just now as to the vertical angle alleged to be within the claim of the suit? A. The degree of the vertical or the character of the angle? My understanding is that the plaintiff's contention eliminates the horizontal angle and is confined to a vertical angle of between 50 and 60 degrees, or more. In fact, I recall words in the various records which are indicative of an angle which would be normal to the plane of the fabric as expressed in connection with the reciprocation of the needle in a 1911

sewing machine, and as expressed by the words "punch action."

Q279. By "normal," you mean perpendicular? A. Perpendicular.

Q280. That would be a vertical angle of 90 degrees? A. Yes.

Q281. At what horizontal angle? A. As I understand, they eliminate the horizontal angles, entirely.

Q282. Referring to Defendant's Exhibit H-46, there is a footnote at the bottom of the page, in italics, stating "Briefly Claim 23 of the Stelos pa-
1913 tent referred to, means working through the fabric with a pumping motion—the only commercially profitable method for repairing hosiery;" does that statement agree with your understanding of what the plaintiff has contended here? A. Yes, in a measure. The expression in that quotation, "pumping action" could of course be most anything.

BY THE COURT:

Q283. Do you refer to that sort of an action? It could refer to that, couldn't it (indicating)? A. The first thing it reminds one of is the action of a pump handle, but considered in connection with all
1914 the other statements of the plaintiffs or some of the statements of the plaintiff from time to time, throughout the various records, it impresses me that what the plaintiff was trying to convey is or was an action of the needle in a right line, as a reciprocation in a perfectly straight line, such as found in sewing machines of the usual type, and such as found in the operation of pistons in cylinders.

BY THE COURT:

Q284. What is the name of that exhibit you were just looking at? A. H-46.

BY MR. WOOSTER:

Q285. Just before the session closed on Friday, I understood the Court to ask you to bring in today your idea of what plaintiff here contends as its Claim 23 in suit; have you been able to do that? A. I have, after considerable effort and collaboration and worry and study.

Q286. How many have you there? A. I have here several papers; the first is one that I prepared some time ago, and is a description of the plaintiff, in its Stephens patent, of the mode of operation of the needle with reference to Figs. 4, to 6 of the drawings. That I prepared for contrast with the phraseology and terminology of the claim 23 in suit, and I have also prepared for the consideration of the Court the division of claim 23 into its several constituent elements. 1916

BY THE COURT:

Q287. As it now reads? A. As it now reads, yes, your Honor. May I just interpolate: these copies I have not had a chance to vise' and correct, if there are any errors, but they are supposed to be taken directly from my book of notes in studying the case. 1917

Q288. In other words, this was done before you came into the trial? A. Before I came into Court, yes, sir. Then over the week-end I have prepared my own personal version of the plaintiff's attitude re claim 23 and as I understand that as applied to the defendant's structure.

Q289. You mean you have drawn a new claim 23, showing what you consider the plaintiff would have had to set forth in claim 23 in order to cover its

present contention? A. Yes and no, your Honor. I did this,—I have drawn a claim which includes what I understand to be the present attitude of the plaintiff with reference to claim 23 and its application to the defendant's structure. In other words, I have so phrased this claim that it reads both on the plaintiff's structure and on the defendant's structure, in terms which I think are so comprehensive as to include both.

Q290. And therefore would mean that was the plaintiff's claim and showed an infringement by the
1919 defendant, is that it? A. Yes, your Honor. To approach it this way, that if this claim were in the plaintiff's application pending in the Patent Office and while so pending a structure such as defendant's came into being and I wanted to, so to speak, catch the defendant's structure with my claims and my application, I would phrase a claim similar to this one, so as to read within the scope of my disclosure in my application and also comprehend the structure of the defendant, as I have seen it on the market.

Q291. That is just what I say. It is assuming that the plaintiff has departed from the claim 23 in its present contention, which I don't know, but as-
1920 suming that, which you have given there now involves those contentions embodied and the result of that embodiment of those contentions cover the defendants' structure, is that right? A. Yes, sir.

The Court: That is what I want.

The Witness: Yes. I have one other which I will say is the result of the collaboration of all parties on the defendants' side and which we have agreed is likewise expressive of the plaintiff's structure and of the defendants'

structure, and which is also now the plaintiff's contention under claim 23.

In order to distinguish that from the others, I have interpolated a number of words there for correction and marked it OK. I found those errors in it when I came in this morning and I made those corrections.

Mr. Gilligan: What is this long description?

The Witness: That is what I prepared as a description of the plaintiff's mode of operation taken from the specification. 1922

Mr. Gilligan: This was some time ago, was it not?

The Witness: I and II were prepared at the same time by me.

Mr. Gilligan: What is No. III?

The Witness: No. III is my personal conception of plaintiff's present attitude, which is what I understood the Court to ask for.

The Court: That is reading Claim 23 as you understand the plaintiff now reads it?

The Witness: Yes, sir.

"I. 1923

"DESCRIPTION.

"Figs. 4 to 6 of drawings.

"1. The operator at first inserts the magnetized hook 1 through the last loop of *a* of the ravel or run and beneath the next thread *b*.

"2. The needle is then slid forward until the loop *a* slides over the free end of the latch or bridge 4.

"3. The needle is then pulled back in the reverse direction, the loop *a* sliding back against the latch or bridge and swinging it against the hook as clearly shown in Fig. 5.

"4. The operator now lifts the needle carrying the loop *c* up over and around loop *a*.

"5. Pushing the needle forward as in Fig. 4 through the loop *c* and hook 1 is inserted beneath the next succeeding thread *d*.

"6. Thus the operation is repeated until the
1925 run or ravel is

"7. Repaired, after which the end is held down by a thread or stitch.

"8. When the fabric has been repaired, the structure of the stocking can be evened up by spreading the chains of stitches with the back of the needle."

"II.

"CLAIM 23

"Method of repairing runs.
1926

"1. Consists in stretching the fabric over a suitable holder.

"2. Inserting a repairing device having a hook and pivoted latch through a loop formed in the run or raveling.

"3. Continuing this movement on through the fabric while holding the device laterally out of alignment with the run or raveling until the loop has slid back over the end of the latch and beneath the latter.

"4. Then reversing the movement of the device through the loop.

"5. Catching the next forward thread in the hook while the loop is being pulled over the latch.

"6. Then reinserting the device into the fabric as

"7. before, and repeating the operation until the run or raveling has been repaired.

"8. And finally fastening the thread."

1928

"III.

"PLAINTIFF'S ATTITUDE RE CLAIM 23.

"An improved method of repairing runs in a knitted fabric which consists:

"1. In positioning the fabric in a plane over a recessed holder having an outside form enabling it to be contained within the fabric and to be grasped by and to support the hand;

"2. Inserting a repairing device, having a hook and movable latch, through a loop formed in the goods; 1929

"3. Stretching the fabric in all directions by the hand;

"4. Continuing the movement of the device on through the fabric, while holding the device at any suitable angle to the plane of the fabric, until the loop has caused the latch to completely open;

"5. Then reversing the movement of the device through the loop;

1930 *C. McC. Chapman. Called by Defendants. Direct.*

"6. Catching the next forward thread in the hook, the said loop being pulled off the latch causing the latch to close the eye of the hook and the loop to be cast off over the end of the device, the said thread caught in the hook thereupon forming a new loop, taking the place of the first-described loop;

"7. Then reinserting the device into the fabric as before;

"8. And repeating the operation with suit-
1931 able hand manipulations of the fabric until the run has been reknitted;

"9. And finally fastening the threads."

"IV.

"STEPHENS' CLAIM 23, IN SUIT AS NOW INTERPRETED BY PLL'FS.

"23. An improved method of repairing runs in a knitted fabric which consists in positioning and loosely stretching the fabric in a plane over a cup-like holder around which the fabric may be held or grasped while being
1932 stretched, said holder being of such length and design as to support the hand during the operation; inserting a repairing device having a hook and movable thread actuated latch downwardly through a loop formed in the fabric; further stretching the fabric in all directions by the hand, continuing the movement downwardly through the fabric while holding the device in or approximately in the plane perpendicular to the plane of the run until the loop has slid back upon and opened the latch;

catching the next forward thread in the hook then reversing the movement of the device until the loop closes the latch, is pulled therefrom and is cast off over the end of the device, the thread caught in the hook thereupon forming a new loop, taking the place of the first-described loop then pushing the device downwardly and beneath the next rung of the ladder and repeating the operation with suitable hand manipulation of the fabric until the run has been repaired, and finally fastening the thread."

1934

Mr. Wooster: I offer as Defendants' Exhibit PP the working model of that run with the needle heretofore referred to.

(Marked Defendant's Exhibit PP.)

BY MR. WOOSTER:

Q292. In the patent in suit is the guard and its relation to the hook the same as in Plaintiff's commercial needle, which it produced here as Plaintiff's Exhibit No. 3? A. May I see that exhibit? It is marked No. 3 on the envelope, and No. 1 on the needle.

1935

The Court: It was the one that was annexed to the claim as Plaintiff's Exhibit No. 3.

Q293. Proceed. A. In the patent in suit as clearly shown in Figs. 1, 2 and 3, the guard, which is indicated at 6 in the patent is shown as having its pointed end or free end terminating within the eye of the hook or at a point quite above the pointed end of the hook. In the exhibit, Plaintiff's Exhibit No. 3, the guard is shown with its pointed end or

1936 *C. McC. Chapman. Called by Defendants. Direct.*

free and terminating quite a bit below the point or towards the handle, the point of the hook.

Q294. By the point, you mean that in the commercial needle, Exhibit 3, the end of the guard is closer to the pivot of the latch than the end of the guard as shown, to the pivot of the latch in the patent? A. Yes, sir.

BY THE COURT:

Q295. Let me have that big needle that you have just put in evidence. A. All right.

1937

BY MR. WOOSTER:

Q296. Proceed. A. In the needle which is the enlargement of the pointed end of the guard, as shown here, the pointed end of the guard is shown as terminating within the area of the eye and considerably beyond the point of the hook.

That corresponds with the illustrations in Figs. 1, 2 and 3 of the Stephens patent. As distinguished from that, the guard in Plaintiff's Exhibit 3 is shown as terminating nearer the pivotal point of the latch.

1938 Q297. Is that a material or immaterial change? A. It has occurred to me and it is my opinion that it is a material change. It simply enables the commercial needle to be utilized in a vertical plane more nearly the perpendicular.

Q298. And why is that? A. Because the guard of the commercial needle of Exhibit No. 3 being so far back from the actual top end of the needle, can be elevated a considerable distance above the plane of the fabric or work upon which it is operating, thus enabling the needle to pass through the

work without danger of snagging or splitting the cross bars or runs of the ladder.

Q299. Mr. Stephens was unable to produce the needle from which the patent drawings were made. What is your opinion as to whether or not the point of the guard extending far out as shown in the patent bears or does not bear on the intent you have found expressed in the patent of operating the Stephens needle at a low angle to the plane of the goods and lateral of the run as shown in Figs. 4, 5 and 6? A. I think the long guard as shown in Figs. 1, 2 and 3 of the Stephens patent, requires 1940
a low angle of operation of the needle more nearly close to the surface of the fabric and also requires a lateral movement of the needle in a horizontal plane relatively to the run in order to avoid snagging the cross bar or splitting the threads thereof.

BY THE COURT:

Q300. The use of that angle in knitting, would you call that a knitting position as opposed to the punch position? What is the authentic name of that, the antithesis of the punch position; would you say that position was to be a crochet position? A. That would be more nearly a crochet position. 1941

Q301. Your idea was that this guard was used for selective purposes, to keep the hook from going down between another rung of the ladder, in that way to keep it from and away from the next adjacent run? A. I think it was primarily used, from what I can determine from the patent, for a sort of shunt or guard for the needle to keep the point of the needle away from the succeeding or next cross thread.

1942 *C. McC. Chapman. Called by Defendants. Direct.*

Q302. That is just what I said. Perhaps I did not put it in the proper vernacular. A. Possibly I did not understand your Honor.

By Mr. Wooster:

Q303. In order for that guard to function as described in the patent, would or would not the plane of the hook be inclined or vertical? A. It would be inclined as very clearly shown in Figs. 4, 5 and 6.

1943 Q304. Would you say the shortening of that guard enables the Stephens hook to be operated more in a vertical plane than with the long guard shown in the patent? A. That is my opinion.

Q305. Referring back to the prior art patent offered in evidence as Exhibit I-47, do you find anything therein which, in your opinion, anticipates Claim 23? A. Yes, sir, I find several. Bearing in mind that most of the needles there are machines which are utilized, and which are shown in the prior art; and to presuppose some kind of a holder for the work or fabric operated upon. Every knitting machine is a suitable holder in that it suspends and holds taut in a properly stretched con-

1944 dition, the work which is operated upon, and which is being produced. If a run occurs in the fabric during the process of knitting, and if it is desirable to utilize the needle at hand for the purpose of knitting the run on the machine, the machine thereby becomes a suitable holder. The remainder of the claim which is a description of the mode of operation of the usual pivoted latch needle is carried out in such hand operation. The majority of the prior art patents of the exhibit referred to in question, Exhibit No. I-47, do not show in connection

with the illustration of the characteristic device or the particular needle made the subject of the claim in the patent, in all instances a holder, but as I said before it is my opinion that a suitable holder is always presupposed.

Q307. Would it be more of an invention in the textile art to repair goods without stretching over something, than it would be to stretch over something in order to repair? A. I have never been able to find any instance of repairing a run in knitted fabric without being on a suitable holder, and without the utilization of some means for 1946
manipulating the fabric during the process of mending the run, excepting those hand methods which utilize the forefinger, and in connection with which short runs alone are mended. In such cases it is conceivable that with a run once stretched, it might not be necessary to continue manipulation of the fabric or continuous stretching the run for the purpose of repairing. I have seen such an operation in which both a mere hook or a hook and needle were employed, and in which also a pivoted latch needle is employed. That is what is called in the various mills that I visited, "the finger method". Therefore, my conclusion is that it requires quite a 1947
bit of invention to utilize a holder of the proper type and manipulate the fabric relatively to the holder and at the same time operate the needle satisfactorily for the purpose of mending the run.

Q308. Referring to your last answer, did you find that quite a bit of invention disclosed in the Stephens patent or not? A. I found nothing in the Stephens patent which would suggest manipulation of the fabric over a holder during the operation of the needle in mending the run. The only reference which I found to holding the fabric is the one which refers to the porcelain dish and the finger method.

Q309. In your opinion, would it be more difficult to repair goods with or without stretching? A. If you are speaking of repairing goods in general, I would say it is absolutely necessary to manipulate the goods relatively to some particular form of holder while repairing the run. That would be true with any kind of needle. The first distinction from that is the finger method, which I have just described and which I have seen in operation in mills.

Q310. Referring to your knowledge of the way
1949 goods were darned or sewed up by anyone in the home for many years, was or was not it stretched? A. Yes, sir.

Q311. In that case, was or was not stretching an elementary art? A. Absolutely it was an elementary act to stretch the goods.

Q312. And you have in the exhibit there a number of references for the repairing of goods where stretching is specifically stated, have you not? A. Yes, sir.

Q313. In your opinion, when Mr. Stephens said to stretch the goods over a porcelain dish or what the claim calls a suitable holder, did or did not he
1950 tell anything new to the world? A. He did not.

Q314. Will you mention a few of the citations which disclose holders and stretching, and if you found any with needles of pivoted latch or other types of needles for repairing? A. In the American patents in the book of exhibits is the patent to Arnold No. 93394, dated August 10th, 1869. In that patent there is an organized machine for the purpose of mending stockings particularly or knitted goods, which have had a hole worn in them. This patent shows what is known in the sewing

machine art as an eye-pointed needle carrying the thread.

Q315. What sheet is that? A. The first sheet. In co-operation with that is a hook shown in Fig. 2 indicated by an N, and in details shown in Fig. 6. That hook is known in the sewing machine art as a looper. It is a common feature in chain stitching machines. This is a machine for making a chain stitch such as a common domestic Wilcox & Gibbs machine.

In the Figs. 1 and 2 particularly there is shown a spherical holder over which the goods are 1952
stretched.

BY THE COURT:

Q316. That is the column-shaped thing with a circular shape at the top? A. Yes, sir. The details of that circular holder are shown in Figs. 4, 7 and 9. This spherical holder is made in two parts, the two semispheres being fastened together in this manner as shown here, and one operating relatively to the other. In one of the spherical parts, shown here in Fig. 7, there is an elongated slot in which the needle works. The operation of that holder is 1953
that the goods, having first been stretched over it and clamped by the band c, the point at which the mending of the goods is to take place is brought directly under the eye-pointed needle shown in Fig. 1, and by a series of operations the stretched goods or stockings are rotated, and at the same time by subsequent manipulation the goods are moved so as to bring the successive courses or chain stitches into the holder opening as shown in Fig. 5.

Starting with the stocking which has been worn out on the edge of the hole which is to be filled, a

first row of stitches, which is indicated at k in Fig. 5 is made through the edge loops surrounding the opening. After that circle of stitches has been completed, the ratchet mechanism shown in Figs. 4 and 9, plus the device x shown in Fig. 1, are operated to shift the material the distance of one row of loops.

At the same time, the pointed instrument shown by the letter p in Fig. 1, which is a lever with a hooked end, engages the chain stitches which have just been made around the border of the opening
1955 and pulls them down. Now when it pulls that down and out over here, it places the needle in position so that successively to that, the chain of stitches or loops is made and then that continues with the holder shifting from time to time, until the entire hole in Fig. 5 is filled up with the supplementary chain stitches which are identical with the chain stitches of the original knitted fabric.

The Witness: (Continuing) In patent 113,213, granted March 28, 1871—

BY THE COURT:

1956 Q317. What is the name of this man? A. Shedlock. There is shown another organized machine for darning purposes in which there is a needle *k* shown in Fig. 4, and also in Fig. 6, which likewise stretches the material because of the divergent grooves or prongs in the surface of the holder. The stocking to be darned, which is shown in Figs. 1 and 2, is laid over the holder and stretched from time to time and fed along from time to time until the entire darning operation is completed.

1957

In the patent to Harley 156,702, granted November 10, 1874, there is shown a holder over which stockings are darned. The holder shows a depression in one end.

BY THE COURT:

Q318. Is that the one before or after Shedlock? A. That is after Shedlock.

The Witness: (Continuing) In the end of which is a recess without a reference character, but in the specification referred to as A1 in which the needle operates for darning purposes. In the patent to Stewart—

1958

BY MR. HODGES:

Q319. May I ask the witness a question? Will you indicate where that recess is, Mr. Chapman, that you talked about, is it in the bottom? A. In the bottom of the instrument. That should be indicated A1.

In the patent to Stewart 312,923, February 4, 1885—

1959

BY MR. GILLIGAN:

Q320. Was this patent cited, this one to Stewart? A. It is set up in the answer—in the amended answer.

The Witness: (Continuing) A holder is shown in combination with sewing mechanisms for darning a stocking.

In the patent to Shiells, 668,422, February 19, 1901, a holder is shown with various sizes of recesses for the reception of the needle.

1960 *C. McC. Chapman. Called by Defendants. Direct.*

The Witness: Ceska 1,337,884 April 20, 1920, which shows a hollow implement with an elongated handle over which the knitted goods are stretched without any additional means.

The patent to Graf 916,926 March 30, 1909, is the patent which covers the devices which are Defendants' Exhibit BB.

There are other holders in the art cited in the answer but I understand that those are the only ones to which you want reference made.

1961 By Mr. Wooster:

Q321. Will you explain briefly what you find in Schulte German patent 125,108, bearing on the use of a holder or stretcher?

The Witness: In the patent there is a holder shown in Fig. 4, over which the stocking is stretched. The hole to be darned or mended being placed over an elongated slot in the holder.

By the Court:

Q322. That is like the brass cylinder we saw in the moving pictures? A. Quite similar to that.

1962 Within the cylindrical holder there is a gang of pivoted latched needles there shown in detail, in Figs. 7 and 9. The material is shifted along from time to time by suitable means, in order to enable the needles to fill up the hole by a series of chain stitches, and the particular operation or successive positions of operation of the needles, are shown in Fig. 8, where the pivoted latch is alternately shown as closed, open and shifted variously in accordance with the usual rule of action of pivoted needles in making chain stitches.

Q323. The same question as to German patent to Foucar, 35,795, 1886? A. That patent was published in 1886—May 27th. In the drawing Fig. 1, particularly, a cylindrical holder is shown over which the material is stretched. The material is held on the holder by the presser foot indicated at M and also a device indicated at K which operates between the needles. The needles are of the usual type and may be either pivoted latch or spring beard.

BY THE COURT:

1964

Q324. Both are shown here? A. Both are here shown in Figs. 5 and 6. The work to be accomplished by this machine is to fill up a hole which has been produced by wear in a stocking or knitted goods with a plurality of interchained stitches, the same as those of a knitted fabric; to anchor the stitches in the material surrounding the hole, the needles are projected through the fabric at a distance from the last or marginal loops of the fabric. Then the needles are caused to go through their usual operations and after the hole has been entirely covered or filled, the chain stitches are tied or anchored in the fabric, all as shown in Fig. 7.

1965

BY MR. WOOSTER:

Q325. Will you now refer to the Billington Patent No. 1314565, and state whether or not that shows a punch method of operation or a pivoted latch needle, and what, if any, distinctions you find between the looping of the curled horse hair and looping the threads of the run in so far as the function and mode of operation of the pivoted latch

1966 needle is concerned? A. The pivoted latch needle in that case is shown clearly in Figs. 8 to 13, inclusive, and a so-called punch action. The needle is exhibited as having a reciprocating motion in a right line. The needle is a usual pivoted latch type used in knitting machines, and frequently in sewing machines. In working through the mass of the material, as shown in Figs. 8 to 13 inclusive, the strands of the material are drawn up into loops and are subsequently interlooped in the form of chain stitches.

1967 This machine is used for stuffing mattresses.

BY THE COURT:

Q326. For stuffing mattresses? A. Yes, sir, it is intended to hold the mass together solidly.

Q327. For stuffing mattresses and pillows and things of that sort? A. Yes, sir. It might also be used for harness.

Q328. For harness? A. For the collars of horses. They frequently put in a matted horse hair filling.

BY MR. WOOSTER:

1968 Q329. What is your answer? A. What is the remainder of the question? (The question was thereupon read to the witness.) The difference between grouping the threads of a run and looping the strands of hair, as shown in this patent, is nil, so far as the ultimate effect is concerned. There is, of course, in result a difference. In knitting a run the fabric is restored to its original or normal condition. The punch method is present, and the mode of operation of the needle is as usual to the pivoted latch needle.

Q330. Was it new with Mr. Stephens to restore the fabric from the run threads? A. It was not. This is as old as 1875, at least as shown in the publication in the record.

Q331. That is the Stephens patent is preceded to that length of time? A. Yes, sir, it is preceded as far as 1875.

By Mr. Hodges:

Q332. Pardon me; will you give me what publication that was? A. That is Der Workerei. The full name of the book is Technology der Workerei. I refer particularly to Figs. 518, 519 and 520. 519 is the illustration of the hook used. 1970

By Mr. Wooster:

Q333. Can a run reknit by the Stephens needle and method, as claimed, be told from a run reknit by this Der Workerei publication, or any other prior art publications or patents, on the reknitting of runs? A. No, sir, the difference can not be told. It is not discernible.

Q334. They all look alike when finished? A. Yes, sir. 1971

Q335. To the eye or casual inspection they are the same? A. Yes, sir.

Mr. Wooster: I offer a photostatic copy of the text of this book, and the English translation of it, "Seaming of hosiery." The date is 1910. I offer it particularly with reference to pages 351 to 360 inclusive, and the drawings containing figures, shown as Figs. 503 to 550, inclusive. This text, being in English transla-

tion published about 1910, from the German edition of 1878. I offer that as my exhibit QQ.

(Marked Defendants' Exhibit QQ).

BY MR. WOOSTER:

Q336. Did you ever visit the Berkshire Mills? A. I have.

Q337. What variety of repair needles did you see in use there, and when did you visit that place? A. I visited that place on January 26th, 1931, and I
1973 saw in use there five Stelos needles, two Vanitas machines, 14 Messing needles, 1 Knitbac machine, and one Der Workerei hook.

Q338. What kind of needles did the Vanitas machines which you saw, have? A. Needles quite similar to the Finch patent, under which the defendants are justifying.

Q339. And what type of needle is the Messing needle? A. It is a pivoted latch needle with the guard near the pivot latch. By guard, I mean a stop or gauge to prevent the needle from going into the fabric too far.

Q340. Will you state generally what you saw in other mills in the times that you visited the other
1974 mills? A. On February 2nd, 1931, I visited the Superior Hosiery Company. They have there 25 workers repairing hosiery. I examined a number of the tools in use and found that in all of these instances a pivoted latch needle was in use, having a very peculiar and unusual form of gauge or stop device for limitation of the movement of the needle.

On February 6th, 1931, I visited the Sterling Silk Glove Company at Bangor, Pennsylvania. I went out to their so called Crown plant of the company, and saw in operation a number of the Der Workerei

hooks and one pivoted latch needle of the usual type. Most of the work was done over the fingers, because it was impracticable to utilize a holder due to the position of the hole or the part of the stocking being mended. This Crown plant is also located in Bangor, and at some distance from the main plant.

BY THE COURT:

Q341. You say they make stockings at this Sterling Silk Glove Company? A. Yes, sir.

BY MR. GILLIGAN: 1976

Q342. And where did you say the Crown plant was? A. That is in Bangor, also but some distance from the main plant.

BY MR. WOOSTER:

Q343. Go ahead. A. On the same day I visited the Kraemer Hosiery Company at Nazareth, Pennsylvania. I found they had in use there two Stelos needles, one Vanitas machine, one Knitbac machine, fourteen Hartzell needles. The Hartzell needles being the one provided with a guard in connection 1977
with which Mr. Hartzell testified in this case.

On February 7th, 1931, I visited the Chipman Knitting Mills at West Easton, Pa., and found 13 ordinary crochet hooks in operation without mechanical holders. That needle is known as No. 13 Boye needle.

BY THE COURT:

Q344. Boye? A. Yes, sir.

1978 *C. McC. Chapman. Called by Defendants. Direct.*

BY MR. WOOSTER:

Q345. Will you explain that Boye needle,

The Court: Yes; is that crochet needle one that simply has a hook?

A. Yes, sir, it has what we call a hook, but it is a stationary hook. It is similar to this shown in Patent No. 677832 De Wickham. It is just an ordinary crochet hook.

1979 BY THE COURT:

Q346. I had an idea it was slanting. A. That hook has various forms.

The Witness: (Continuing): The hook shown there, the Boye hook is peculiar; it has the flat portion midway of its length, so the fingers can hold it easily, so it cannot turn in the fingers.

February 7th, I also visited the P. J. Hoffman Company's mill at Allentown, Pennsylvania. In
1980 that factory there were about forty-five circular knitting machines in operation, or rather installed, twenty-five of which were in operation. These twenty-five machines were attended by three operators and I found that if faults occurred or runs occurred, during the course of knitting, resulting from a broken thread or broken needle, the machine would be stopped and the fault would be corrected by the utilization of a hooked needle, from which the pivoted latch had been removed. That needle was utilized very much the same as the pivoted latched

needle, and it was thrust through the fabric at a right angle to the run of the goods.

BY THE COURT:

Q347. Do you mean the plane of the goods or the run of the goods? A. At right angles to the plane of the goods. They call it the run of the goods because it was pendant from the machine.

Q348. That is what I supposed. A. Yes, in a vertical position.

When the last loop of the run had been taken up, a needle with a thread was utilized for securing it and tacking it to the body of the knitted goods. 1982

On February 14, 1931, I visited the Faultless Hosiery Repair Co., in Brooklyn, New York, and saw in operation there four or five needles, mending runs in hosiery. The type of the needle being usually a Workerei hook, somewhat modified because of having the eye elongated due to the bending of the hook.

Q349. Was that all done by hand there? A. That is all done by hand.

Q350. On any sort of holder? A. Mostly over the finger, according to where the hole occurred in the goods. The faults were usually at the junction of the leg and the foot portion of the hosiery, which appeared to be a point at which the needles could not very readily draw together the various loops. It was impractical to place the hosiery over a holder of any kind, save the finger, which, of course, could search out the easiest way of holding the material and adapting itself to whatever condition was found to exist. 1983

1984 *C. McC. Chapman. Called by Defendants. Direct.*

BY MR. WOOSTER:

Q351. Did you go to any of the woolen mills which worked on heavier goods? A. Yes. I visited the Thermo Mills at Hudson, New York, March 13, 1931. There I found the overhead circular machines in operation known as the Tomkins machine, illustrated in that book, a photograph of which you have, and in connection with which Mr. Hitchcock testified. In that same mill there were a number of Wildman machines making ribbed tubular ma-
1985 terial. I understand that faults very seldom occurred in that work, but the hooked needle from those machines was utilized for mending the runs on the Tomkins machines as testified to by Mr. Hitchcock.

Q352. When you were at the Kraemer Mills in Nazareth, did you meet Mr. Hartzell? A. Yes.

Q353. Did he give you one of his needles? A. He did.

Q354. So far as the guard and pivoted latched structure is concerned, what difference do you find between the Hartzell needle and the Stephens commercial needle, Exhibit 3? A. I examined both very carefully and found that the guard bears exactly
1986 the same relation to the hook and the eye of the needle.

Q355. What, if any, difference in function did you find? A. None whatever.

Q356. Did you see people operating the Hartzell needle in the Kraemer Mills? A. I saw Mrs. Rohrbach operating the Hartzell needle. She demonstrated it to me and demonstrated it over an ordinary jar,—it looked like a honey jar.

DIRECT EXAMINATION BY MR. MORRIS:

Q357. Now, Mr. Chapman, will you be good enough to turn to the Pogson publication, defendants' Exhibit J-48, received in the United States Patent Office Library, November 16, 1921—has your Honor a copy of that?

BY MR. MORRIS:

Q358. Do you find, Mr. Chapman, in the Pogson publication, any description of a needle? A. Yes, sir.

1988

Q359. Will you kindly tell me the type of a needle there described? A. The ordinary pivoted latched crochet, I mean, knitting needle.

Q360. The ordinary pivoted latched needle, without a shank? A. Without a shank.

The Court: What do you mean by a shank?

Mr. Morris: Guard, I meant. I misused the term. I meant without a guard.

The Witness: I think without a shank is also proper, in view of the fact that applied to the shank is the needle, which eliminates the shank.

1989

Mr. Morris: Guard is what I had in mind. It was my misuse of the term.

Q361. Will you tell me whether you find in that printed publication anything descriptive of the method of use of the Pogson needle? A. Yes, there is a very full description.

Q362. Beginning where? A. Beginning on page 2, line—

Q363. 28? A. 28.

1990 *C. McC. Chapman. Called by Defendants. Direct.*

Q364. To 81? A. And ending at line 81.

Q365. I have prepared, Mr. Chapman, a paper in parallel columns, showing—copying those lines 28 to 8[illegible] in one column and the description of the method of Stephens from line 85, page 2, to line 29, I think it is, of page 3 of Stephens. I put them side by side. I give your Honor a similar copy, together with a marked copy, so you may follow it, your Honor.

Will you tell me whether there is similarity in the method described by Pogson and that described
1991 by Stephens, and if so, wherein that similarity lies? I am not now referring to drawings, but simply to the verbal description of methods, as pointed out by you in lines 28 to 81 on page 2 of Pogson.

The Court: The other is taken from Stephens?

Q366. Line 85 page 2, to line 29, page 3, omitting those parts where he stops and parenthetically explains something about the device. Those omissions are indicated by stars on the typewritten page which I have passed to the witness and the Court. I will get you to turn, Mr. Chapman, to the begin-
1992 ning of the third sentence in Pogson's description:

> "The needle thus engaged, is then moved to the position shown in Fig. 4 to enable the forward hook and to be directed toward the adjacent piece of thread or yarn under which the hook is passed, as shown in Fig. 5, and moved forwardly until the latch *b* passes to loop *f*."

and I will ask you to refer to the words in the Stephens application disclosing a similarity or identity in direction of movement or a different direc-

tion of movement? A. Specifically I have read both of these paragraphs or descriptive matters many times, and I have been unable to find any material difference between the Pogson description and the Stephens description. With reference to the particular matter that you referred to, the description of the mode of moving the needle seems to be the same in both instances.

Q367. What is the word in Pogson that describes the direction of movement in the sentence which I read in the fourth sentence? A. "Moved forwardly."

Q368. Which is the word? It is the word "forwardly" then? A. It is. 1994

Q369. What word do you find in Stephens to indicate, describe and disclose his direction of movement? A. "Slid forwardly."

The Court: Slid forward, isn't it? A. Slid forward.

Q370. What do you find in Pogson, to indicate the direction of movement other than "forward," which immediately follows the sentence we have been dealing with, in Pogson? A. "Reversed."

Q371. What do you find the language of Stephens 1995
is to indicate that direction of movement? A. Reversed or pulled back.

Q372. Do you find anywhere in the disclosure or description or specification of Stephens the word "upwardly" or "downwardly" or "punch method"? A. None whatever.

Q373. Will you turn to the next sentence, the sentence beginning, "In passing the loop G1 (in Pogson) under the loop F, the latter passes out of engagement with the needle and the latter is then free

to be moved forwardly over the loop F." Do you find any direction of movement there described by Pogson,—or freedom for a movement in a specific direction described by Pogson? A. It says that the needle is then free to be moved forwardly.

Q374. What is the word which describes the direction or movement? A. "Forwardly."

Q375. Passing to Stephens, describing the same step or operation, which is the first sentence in the second paragraph of Stephens as typed there, do you find any word to indicate a direction of move-
1997 ment there? A. Yes.

Q376. And what is the word used by Stephens? A. "Forward."

Q377. The same "forward", except for the termination "ly"? A. Correct.

Q378. Is there any difference in the direction of movement because of the omission of the "ly" from the word "forward"? A. No, sir.

Q379. I guess your Honor does not need an expert to tell you that. Now, then, continuing in Stephens:

> "As in Fig. 4, through the loop *c* and hook *l*
> 1998 is inserted beneath the next succeeding thread *d*."

Where do you find a work in Pogson to indicate a position—in order to expedite your answer, I will refer you to the third sentence at the top typewritten page in Pogson and it is the fifth line in that sentence:

> "The needle thus engaged is then moved to the position shown in Fig. 4 to enable the forward hook end to be directed towards the ad-

jacent piece of thread or yarn *g* under which the hook is passed as shown in Fig. 5 and moved forwardly until the latch *b* passes the loop "*f*".

A. The word "forward" is used.

Q380. How about the word "end" as the word used,—we are dealing with Pogson now, not Stephens. A. No, I do not think that would, after further consideration.

Q381. Is that right here? A. This one is Pogson and this one is Stephens.

Q382. Well, we will just pass from the forward movement a minute, and take the static position. 2000
A. All right.

BY THE COURT:

Q383. Under and beneath as in g'?

Mr. Morris: I have it right here. It possibly has been omitted from yours.

BY MR. MORRIS:

Q384. Now, will you go ahead. A. I don't think you have a question before me now, have you? 2001

Q385. I will read now from the Stephens patent: "The operator now lifts the needle carrying the loop c up over and around loop a, pushing the needle forward as in Fig. 4 through the loop c, and hook 1 is inserted beneath the next succeeding thread d." Now, then, the similar word in Pogson is "under", found right opposite that statement on the page, where it says "• • • and the loop thus formed in the piece of thread or yarn h, is taken

under the loop g' and the latter disengaged from the needle".

Now, is it not a fact that it says in three different sentences "under", in the Pogson patent, while in Stephens it says "beneath"? A. Yes, sir, that is true.

Q386. That happens one or more times, does it not? A. It does.

Q387. So that what advance, if any, in the method of use of the needle separated from the cup or porcelain dish do you find described in the Stephens
2003 which is not described in Pogson? A. None at all.

Q388. Did you or did you not find in Stephens, anything to indicate the use of the needle at an angle to the plane of the fabric greater than as disclosed by Pogson? A. No.

Q389. You pointed out yesterday three different things in the Stephens patent indicating that a reciprocating or a forward and backward movement was not in a right line reciprocation? A. Yes, sir.

Q390. So that no disclosure is made by Stephens to indicate or suggest that that backward or forward movement should be in the plane of the fabric
2004 rather than out of the plane, so far as you found? A. None, whatever. It is quite clear that it is in the plane of the fabric.

Q391. Would any person skilled in the art, either as disclosed on the first page of the patent to Stephens, or any person skilled in the prior art be able to find in the Stephens application and method of operation the needle at an angle to the plane of the fabric, rather than in the plane of the fabric? A. I could not conceive of it in the Stephens disclosure.

Q392. Let us turn to the drawings of Pogson. What do you find there in Fig. 6 as to the Pog-

son method with specific reference to Fig. 6? A. Just what do you mean?

Q393. With specific reference to Fig. 6. At the end of the forward movement, is the hook of the Pogson needle above or below the second rung of the ladder in advance of the loop through which the shank of the needle is inserted? A. Below.

Q394. It is below? A. Yes, sir.

Q395. Do you find a disclosure even to that extent even in Stephens patent, and I refer you to pages 297 to 300 of the plaintiff's testimony, if you want to make certain of their interpretation of 2006
their own disclosure? A. Will you state that in a different way?

Q396. Do you find anything in the Stephens application to show whether the end of the needle in its extreme forward movement, is above or below the second rung of the ladder in advance of the hook through which the needle is inserted? I refer you specifically to Fig. 4, of Stephens and ask you if there is anything in the four corners of the patent to indicate whether or not the end of the needle is above or below thread d in the extreme forward position of the needle? A. No, sir.

Q397. It is conceded that the fabric in Fig. 4 2007
is exaggerated. It says so in the patent on page 2, that the run is exaggerated. My question is, with it not exaggerated do you find anything within Fig. 4 or as a matter of fact, within the four corners of the patent any disclosure by Stephens to indicate in the operation of the needle, that the end of the needle should, in its extreme forward movement, be above or below the second rung of the ladder in advance of the loop through which the needle is inserted? A. No.

2008 *C. McC. Chapman. Called by Defendants. Direct.*

Q398. Then so far as the punch method is concerned, which is the better disclosure, the Pogson or Stephens, by drawings? There is no difference in the description. A. It looks to me like it would be a toss-up.

Q399. When Pogson goes below the second thread and you do not find whether Stephens does or does not? A. It is quite clear in the Pogson that he does go below the second thread.

Q400. And to that extent does that mean that his angle of incidence would have to be greater than
2009 if he went above it? A. Yes.

Q401. Then taking the two figures into consideration, which is the only one which discloses anything in the nature of a punch method. A. The Pogson patent.

(Adjourned to 2:30 P. M., same day.)

Mr. Morris: If your Honor please, a copy of the file wrapper, contents and drawings in the matter of the abandoned application of DeMarr has been produced by counsel for plaintiff to counsel for defendant and I offer it in evidence as Defendant's Exhibit RR.

(Marked Defendant's Exhibit RR.)

2010

BY MR. WOOSTER:

Q402. Mr. Chapman, I hand to you the paper I have just referred to and introduced into evidence and I ask you, sir, whether you find any similarity in disclosures of the DeMarr application to those of the Stephens patent, and if so, wherein is such similarity found? A. Yes, sir, I have read this exhibit and I find many similarities, both in the use of language, the description of the invention

and the illustrations thereof shown in the drawings.

Q403. Specifically, referring to the lines of the DeMarr application, will you point out the similarity or identity of language? A. The invention of DeMarr is set up primarily as relating to an improvement in needles and its method of use, which is quite similar to the preamble and the descriptive matter of the Stephens patent in suit.

Q404. Have you the Stephens patent before you? A. Yes, sir.

Q405. And lines 1 and 2 of page 1? A. The introductory part I just referred to is page 1 of the Stephens patent in suit, lines 1 and 2. 2012

Q406. The language being identical? A. The language being identical, yes, sir.

Q407. Where next do you find similarity or identity of language? A. In the second paragraph of the DeMarr specification, page 1, in which similar language is used in reference to repairing runs. The language in that paragraph seems to be in all material respects the same as the second paragraph of the patent in suit. The same difficulties are referred to and the same objects are set out as being within the scope of the DeMarr invention.

Q408. Is there any reference in DeMarr to a porcelain dish? A. There is a reference at the bottom of page 1, as follows: 2013

> "It has the further advantage of being suitable for doing various kinds of fancy work or stitches where fabrics are stretched on a frame."

That is the reference which I find to a suitable holder.

In the DeMarr specification, differentiation is made as between the ordinary crochet and similar needles and their objection and the manner in which the applicant DeMarr purposes avoiding them by the use of a hook, simply by hooking either the side of the fabric or, rather, obviated by hooking either the side of the fabric or catching up the two threads, instead of one, and closing the guard or bridge, and in this case the work can be safely carried or laid down without danger of the needle coming out. This is referred to, in a general way,
2015 in the paragraph beginning line 24, page 1, of the Stephens patent.

Q409. Do you find anything in the DeMarr application which indicates that the applicant there intended the needle to be moved in the plane of the fabric? A. The entire disclosure seems to be and the drawings carry out the idea to move the needle in the plane of the fabric or parallel with the surface of it.

Q410. What language is used in making that disclosure similar or identical with the language of the Stephens patent? A. They appear to be about the same.

2016 Q411. Will you make specific references to some of those sentences? A. In the DeMarr application, the needle is referred to as consisting of a hook and guard, or bridge, pivoted thereto, and the needle terminating at one end in a handle by means of which it is manipulated. This is identical with the Stephens patent in suit, save in the use of the words "guard or bridge", which is applied to the latch or bridge.

BY THE COURT:

Q412. In the DeMarr patent? A. In the DeMarr application, the guard or bridge is the same as the latch or bridge, in the Stephens patent.

BY MR. MORRIS:

Q413. There is another similarity which I think you pointed out to me. A. In the description of the Stephens patent, at points which I have referred to before.

Q414. You mean by that page 2, line 45 and page 3, line 30? A. Yes. 2018

Q415. On page 2, line 45, and page 3, line 30, of the Stephens patent, state the similarity. A. What I was about to refer to is the similarity of the phraseology with reference to the curve in the shank of the needle. That enables the needle to be utilized close to the surface of the fabric.

Q416. Read the DeMarr statement with respect to that. A. In the DeMarr specification on page 3, in the paragraph beginning on line 10, particularly the matter beginning at line 14, it reads: "A notch or recess 5 is made in the back of the needle opposite the free end of the guard or bridge when 2019 the ladder is wide open." That is shown here, Judge (indicating). "The purpose of it is to reduce the thickness at that particular point of the needle to adapt it more nearly to the thickness of the thread or yarn." I think that is rather similar.

Now, here is another point that follows right along here, that I also wish to read. "More particularly for the purpose of reducing the required movement of the needle in the operation to an ex-

tent corresponding to the depth of the notch or recess."

Q417. Is that substantially identical with the language in lines 45 and 46 on page 2 of Stephens patent? A. Yes, sir, that is correct. Also, the further reference which I was about to make in the Stephens patent, beginning on line 30, page 3.

Q418. Read the DeMarr phraseology that is substantially similar to that, or are you combining page 2 and page 3 of Stephens patent? A. Yes, sir, combining both of them.

2021 Q419. What was the advance of the art disclosed by Stephens patent over that disclosed by the DeMarr patent, having regard to the patent as issued and the claim 23 as issued? A. With reference to claim 23 as issued, and the portions of the specifications which are the basis for claim 23, I see no advance at all in the Stephens patent over the DeMarr disclosure.

Q420. Does the DeMarr, however, disclose anything in the application "laterally out of alignment with the run", does it disclose anything in there anywhere to that effect? A. They practically show the needle right on the surface of the fabric, and apparently more or less in line with the run.

2022 Q421. Where in the proceedings in the Patent Office upon the Stephens application are used the words "laterally out of alignment with the run" anywhere, either in the pending proceedings for the patent, or in the application or anywhere else were they first shown? A. They were inserted by an amendment, and not by the original disclosure.

Q422. It was not in the original application? A. No.

BY MR. MORRIS:

Q423. Where did they put that when they brought it in the claim or descriptive part of the specification? A. Just where it is now.

Q424. In claim 23? A. Yes, sir, in claim 23. It was originally brought in, I believe, as claim 10.

Q425. Issued in the original patent as claim 15? A. In the original patent as claim 15, and in the re-issue patent as claim 23.

Q426. Do you find in the descriptive part of the specification, that term used anywhere at all "laterally out of alignment?" A. No, sir. 2024

Q427. Turn to page 1 of the Stephens re-issue patent. A. All right.

Q428. And I refer to lines 3 to 5 inclusive, reading "In repairing the runs or ravels in knitted goods, other needles have been used, but they are not practical, and the method of use is a tedious one;" now, bearing the Pogson patent in mind, is that true or not true? A. It is not true.

Q429. I refer now to lines 20 to 23, page 1 of the Stephens patent, reading: "It is impracticable to use other needles with my method." Assuming the method to be that which the Stelos Company have impounded into the commercial method or process, 2025 or function of their needle, is that true? A. It is not true.

Q430. If I make my next question more specific as to claim 23, as written, is that true? A. No, it is not.

Q431. What have you to say with regard to the statement made in the Stephens patent on page 1, lines 24 to 28 of the reissue patent, which reads as follows: "with other needles used for a similar purpose, the latch or bridge must be forced open

2026 *C. McC. Chapman. Called by Defendants. Direct.*

by pressing against the thread or fabric and, in operation, can be opened in no other way." I want to know if that is true or not true as to the Finch needle used by the defendant? A. That is literally true of the Finch needle. It has a latch which is entirely loop or thread manipulated.

Q432. What do you understand by the purpose of such a statement, or that statement in particular, in a patent specification? A. Such statements in patent specifications are used, usually, they are utilized for the purpose of accentuating some ad-
2027 vance or advances which go to make up the alleged invention of the applicant for a patent.

Q433. That is the sentences to which I have already referred on page 1 of the Stephens re-issue patent, are intended to constitute a platform or basis above which and beyond which the patentee is contending that he has made an advance in the art? A. That is correct.

Q434. I will ask you to direct your attention to line 36 of page 1 of the Stephens re-issue patent, which reads as follows:

> "With other needles and their method of use, one thread holds the latch or bridge
> 2028 closed over the hook and the thread to be looped must be forced into the hook while the latch is so closed."

I will ask you if that is a true statement of facts, bearing in mind the spring latch in use in the prior art to which reference has been made by the patents introduced in suit, Exhibit I-47, Defendants'? A. That is not correct. It is not true.

Q435. I now direct your attention to line 49, page 1 of the Stephens patent, reading:

"Other needles and their method of use, require four separate motions to complete one purpose—2 forward and 2 back."

Incidentally, there is another place where they use the word "forward," which I did not have in my other statement? A. That is not correct.

Q436. What do you have to say with regard to them as being a correct disclosure of the prior art? A. It does not apply to the prior art; it applies to a very few of the needles that I have come in contact with.

2030

By Mr. Morris:

Q437. I now direct your attention to the next sentence:

"My invention and its method of use requires but one forward and backward motion to accomplish the same purpose;"

Is that true, bearing in mind that the description of the operation as set forth in lines 85, page 2, and 29 on page 3 of the Stephens re-issue patent? A. No, sir, that is literally wrong; that is not true.

2031

Q438. I now direct your attention to lines 58, page 1 of the Stephens re-issue patent in suit, which reads thus:

"With other needles and their method of use, it is necessary to insert the hook into the first loop of the fabric to be repaired."

Is that true or not true? A. That is not true.

Q439. How far do these statements vary from the truth? Take that one as an illustration? A.

That particular statement varies from the truth in this, that it is impossible, in mending runs with the fabric as stretched or partially stretched, as preliminary to inserting the needle, to insert it in the last loop of the run. As I think I stated before, the last loop of the run is very fugitive; it vanishes very quickly, and the attempt to insert the needle in it is very often abortive. What is actually done is stabbing the fabric and driving the needle through a considerable distance from the end of the run.

2033 BY THE COURT:

Q440. In other words, bringing back the run to it. A. Allowing us to bring the run and ravel back to the shank of the needle.

Q441. I give you a Finch needle that seems to have a slit in it, but for our purpose may be considered the same, and ask you whether that needle, from a practical standpoint, being inserted through a loop formed in the run or ravel—I will withdraw the question and ask you this: How many loops are there in the run or ravel? A. I should say just one.

2034 Q442. Never more than one in one chain? A. Yes, at the end of the run.

Q443. There may be several at the bottom? A. A. In the run, just one loop at the end.

Q444. And how must that needle be positioned if the process of the claim, inserting it through a loop formed in the run or ravel? A. One possible way of doing that is shown in the Pogson drawings. That is, by turning the needle completely over and directing the shank of the needle away from the last loop and thereby turning down the

point of the hook, enabling the point of the hook to be inserted in the loop, which is upstanding.

Q445. Similar to the method that was illustrated by Mr. Stephens in his disclosure to us of what the Mexican method was? A. I think so, yes.

Q446. I now ask you to turn to Fig. 4 of the drawing of the Stephens patent, and ask you as to whether there is any error in connection with the loop, as shown in that figure? A. The figure shown just below the one to which the loop is extended, a loop which is parted—

BY THE COURT: 2036

Q447. Incomplete, I noticed that before. A. It is an incomplete loop.

BY MR. MORRIS:

Q448. Take line 70 of the first page of the patent in suit, is that any more nearly true with respect to plaintiff's magnetized needle than with needle of the prior art, such as, for instance, the spring beard latched needle of Carey, and if there is a difference, is it one of degree or not? A. Why, no, it is not more true of the Stephens needle than 2037
of the Shanowitz needle in operation, the Hartzell needle in operation, the spring bearded pivoted latch needle of Carey, I think it is, and various other illustrations of needles, shown in the prior art patents in which there are various springs shown for the purpose of making a latch fly open.

Q449. I direct your attention to line 44 of the reissue patent in suit, in the following lines, reading thus:

"With my invention and its method of use, the latch reaches for and grasps the thread to

> be looped, forces it into the hook and the latch is then tightly closed by the loop already on the needle;"

does the Finch needle function as there specified or can it so function? A. It does not, and I cannot imagine it functioning in that way. That seems to be peculiar to the Stephens needle.

Q450. Will you turn to the DeMarr application and tell me what she says about speed of operation? A. In one portion, at the bottom of page 3 of the
2039 specification, the paragraph reads as follows:

> "The present invention is wonderfully well adapted to the repairing of runs in silk stockings, although it applies as well to breaks in the stitches of sweaters, and other knit or crocheted fabrics. By its use a stocking can be easily and quickly repaired by hand and restored to its original condition at slight expense. The skill required to operate the needle is easily acquired with a little practice."

By Mr. Wooster:

2040 Q451. Will you summarize for the Court the printed matters and prior uses which have been put in evidence, which in your opinion constitute a complete anticipation of claim 23 in suit? A. The structure and the combination of means of Hartzell involved a holder, a pivoted latched needle and also a guard, appears to me to be a complete answer to claim 23 of the patent in suit.

The reference in the Branson exhibit to mending runs is, in my opinion, also a complete answer, in that it refers to a means for holding the fabric and

discloses the pivoted latched needle for the purpose. This combination means seems to apply to the mode of operation set out in claim 23. All the prior art patents which show a pivoted latched needle presuppose a suitable holder. Therefore, the disclosure of claim 23 is only the mode of operation with such needles.

Specifically the Tompkins machine, demonstrated by Mr. Hitchcock, discloses a suitable holder, and a pivoted latched needle is employed in connection therewith, and while I was at their Thermo factory, I noted that when the run, which by any chance 2042
progresses too far into the fabric, the pivoted latched needle was plunged through the material and practically at a right angle to the surface of the material. The manipulation of the needle otherwise is precisely the same as set out in the mode of operation of claim 23 of the patent in suit. Particularly, referring to the Carey patent, which shows the spring beard with pivoted latch, I worked out of that patent, before I saw the actual operation of the needle, this fact: That as the loop slides over the latch and closes the same upon the point of the hook of the spring beard, it compresses the latter, resulting, when the loop snaps off the end 2043
of the needle in an expansion or flexure, you might say, of the spring beard, which causes the pivoted latch to fly open and this occurs every time a loop snaps off. I saw that demonstrated several times and it occurred during the demonstration here in Court.

As I before stated, that mode of operation and the use of the needle presupposes a holder of some sort, because it is impossible, in my opinion, to mend a run or knit goods or reknit goods for the purpose of repairing a fault without a suitable

holder. All such methods of operation fall within the comprehension of claim 23 of the patent in suit. I may have missed some of the exhibits.

By Mr. Wooster:

Q452. I call your attention to the Gearhart publication, and to the depositions taken at Milwaukee, and the Auto Knitting publication. A. Yes, I recall those and in each instance there was a suitable holder, whether a machine or otherwise plus a pivoted latched needle, manipulated in the ordinary
2045 and usual way of pivoted latched needles, and each of those disclosures falls within the terms of claim 23 of the patent in suit.

Q453. You have heretofore pointed out and testified that Pogson falls within the scope of claim 23 as an anticipation. A. Oh, yes, sir, the patent to Pogson, as a matter of publication, discloses a pivoted latched needle, presupposes a holder and a mode of operation in the first column of the specification is, in great measure, parallel with the disclosure of the mode of operation of the Stephens patent in suit, and that Pogson disclosure falls
2046 within the scope of claim 23.

By Mr. Morris:

Q454. Look at Fig. 1 of Pogson and say whether you mean "presuppose" or "disclose". A. With reference to Pogson, it is a literal disclosure. Your Honor will note in that illustration, Fig. 1, the view which is supposed to be—

By the Court:

Q455. A stretched fabric? A. A stretched fabric.

Q456. Therefore, you mean there must be something to stretch over? A. There must be something, and it is shown in the plane and certainly not stretched over the finger any more than is the fabric shown in the patent in suit in Figs. 4, 5 and 6.

BY MR. WOOSTER:

Q457. I would like to ask you to summarize with claim 23 before you, your reasons for considering that that claim is not infringed by the Vanitas machine, or with the Finch needle, and by the manner 2048
in which it has been used in this trial. A. I have heretofore pointed out, what I have considered the characteristic physical features of the defendants' latch. I have distinguished their latch from the pivoted latch which is set out in discussing the claim of the patent in suit.

The claim of the patent which is herein under discussion, is "an improved method of repairing runs or ravelings in a fabric which consists in stretching the fabric over a suitable holder".

Taking that element by itself, it can not be denied that the defendant uses a suitable holder in the use of its needles.

2049

The claim continues: "* * * inserting a repairing device having a hook and pivoted latch through a loop formed in the run or raveling"; the defendants' structure does not show a pivoted latch, nor anything, in my opinion, equivalent thereof. The mode of operation of the sliding latch is altogether different from the mode of operation of the pivoted latch. I think I have outlined quite a bit, the various reasons why the sliding latch is not the equivalent of the pivoted latch, therefore that element of the claim is not found in the defendants' structure.

2050 *C. McC. Chapman. Called by Defendants. Direct.*

The next clause of the claim is "Continuing this movement on through the fabric while holding the device laterally out of alignment with the run or raveling until the loop has slid back over the end of the latch and beneath the latter."

There are two reasons why that clause is not answered by the defendants' structure. The first one is that the movement described there and ascribed to the instrument or device is not true of the defendants' structure, since the defendants' needle is not, in its operation, held out of line, with the
2051 run or raveling. The defendants' structure or needle or device as a whole is held directly over the the run with very little of deviation from the line of the run and in a vertical plane as distinguished from the horizontal plane or laterally out of alignment with the run or raveling.

Then there is a radical difference from "until the loop has slid back over the end of the latch and beneath the latter"; this is not answered by the defendants structure because it is a physical and mechanical impossibility to get the loop under the latch or make the loop pass over the end thereof.

The next clause of the claim is "Then reversing
2052 the movement of the device through the loop, catching the next forward thread in the hook while the loop is being pulled over the latch, causing the latch to close over the thread, and the loop to be cast off over the end of the device"—this is an ordinary operation in the art of mending runs and is nothing new, so far as the mending of runs is concerned or the operation of a pivoted latch on this needle to which it is attached.

The phraseology there, however, has reference to that particular function of the pivoted latch in

the plaintiff's structure wherein it is stated in the specifications that the loop is pulled over the latch causing it to grasp the thread and force it into the hook of the needle. There is something, so far as I have been able to find, that's impossible for the defendants' needle to carry out in such an operation. It can not do that at all. It seems to me to be a physical and mechanical impossibility to cause a sliding latch such as the defendants' needle, to operate in that way.

The statement following is: "the thread caught in the hook thereupon forming a new loop, taking 2054
the place of the first-described loop, then re-inserting the device into the fabric as before, and repeating the operation until the run or raveling has been repaired". That mode of operation is not the same. That is not found in the defendants' structure. It is impossible to do that with the defendants' structure.

The final clause of the claim is "and finally fastening the thread". That, of course, is common to any run mending operation.

BY THE COURT:

Q458. Otherwise the run would run back again? 2055
A. Yes, sir.

Q459. They do not say anything about magnetism in this claim 23? A. No, sir.

BY MR. WOOSTER:

Q460. In your opinion, was the hand of Mr. Shanowitz where he stretched the run over his thumb and index finger, such a holder as would satisfy the term in claim 23 of "suitable holder"? A. Most

2056 *C. McC. Chapman. Called by Defendants. Cross.*

assuredly, undoubtedly. It is a suitable holder. It is a suitable holder for the purpose of mending runs. It is a suitable holder for stretching and manipulating the fabric. It certainly was in the terms of claim 23.

BY THE COURT:

Q461. The holder does not necessarily mean anything that is water-tight, or liquid tight, it simply means something that holds? A. Yes, sir.

2057 The Witness: I have a copy of the patent here. That is a special or so-called factory machine and is for the purpose of applying festoons or ornamental material to the edge of a fabric.

CROSS EXAMINATION BY MR. HODGES:

XQ462. Mr. Chapman, as I get the impression from your testimony, during the latter part of today, it is somewhat to this effect, and you may correct me if I am wrong, that you virtually class Mr. Hartzell and Pogson, DeMarr and what you saw
2058 in the moving pictures, for instance, and also Stephens, all as one and the same method or process? A. No, sir, you got me wrong, if you got that impression.

XQ463. Will you explain just what you did say? A. My recollection is that I referred to Hartzell and the method of operating the needle, Pogson and the method of operating the needle as falling within the terms of claim 23 of the patent in suit. I utilized, under examination, the DeMarr structure for disclosure as illustrating striking similarities be-

tween descriptive disclosure of DeMarr and the Stephens patent in suit.

XQ464. As between DeMarr and Pogson, did I understand you to class those substantially the same, as disclosed in the description, drawings and the application? I mean the publication of Pogson and the abandoned application of DeMarr? A. Not as substantially the same, but the Pogson structure as clearly falling within the scope of claim 23.

XQ465. Well, in describing the DeMarr disclosure, I understood you to say that the needle went on the surface or parallel with the surface in its movements back and forth is that correct? 2060
A. It has that appearance, and I believe that that is correct.

XQ466. And would you say the same about Pogson? A. No, I think that Pogson clearly shows that the needle goes below the surface. Of course, how far, it is impossible to state, but nevertheless it does go below the surface of the cross bars of the run and surface of the fabric.

XQ467. Well, now, you did make the statement that in Fig. 6 of Pogson, the hook of the needle is shown below the cross thread *h*, did you not? A. Which thread?

XQ468. The thread *h* in Fig. 6? A. Yes, I think 2061
that is correct.

XQ469. Do you find any justification in the Pogson description for that? A. Yes.

XQ470. Will you quote it, and indicate the lines? A. Beginning line 36, page 2, there is the following:

> "The needle thus engaged is then moved to the position shown in Fig. 4."

That position, as shown in Fig. 4, is supposed to be with the point of the needle,—the hook of the needle in the loop, the latch being thrown back, wide open and the needle is pointing up the run,—and

> "to enable the forward hook end to be directed towards the adjacent piece of thread or yarn *g*."

XQ471. Would you stop right there; what is your interpretation of "toward the adjacent piece
2063 of thread or yarn *g*"? A. The usual interpretation, that is, that the hook end which is the pointed needle, is directed in the direction—

XQ472. It does not say that, does it? A. You asked my interpretation of it.

XQ473. I beg your pardon. A. In the direction of the adjacent piece of thread or yarn *g*.

XQ474. So you translate "towards" in the direction of, and the end of that thread is shown apparently, when you read it in connection with Fig. 1, presumably on the same plane, is not that right, with the other threads, with f^1, for instance, or *g*? A. No, not as I understand it.

2064 XQ475. You think they are on different planes? A. The end, according to the disclosure of the Pogson specification, that is below the surface of the run.

XQ476. Which is below the surface of the run? A. The hook.

XQ477. Is it where it is shown in connection with the cross thread *h* below? A. In Figure 5, it has not reached the cross thread *h*; it is on its way under or toward the cross thread *h*.

XQ478. Now, in Figure 6, it has moved a little forward, has it not? A. In Fig. 6? Yes, sufficient-

ly far according to the specifications, under which the hook has passed, as shown in Fig. 5, and moved forwardly, still going forward until the latch *b* passes the loop *f* as in Fig. 6.

XQ479. Where do you find any description of Fig. 6? A. In my wording.

XQ480. Oh, you substituted that? A. I have not substituted anything. I have simply given you my explanation, as you asked for it.

XQ481. Oh, I beg your pardon. Do you find any reference to Fig. 6 in the description there, is it between the lines, 40 and 50? A. Not specifically, but 2066
obviously it is a part of the method.

XQ482. You say "obviously" and not "specifically". You criticized our specification quite severely. You know all about this apparently, but you cannot find out what we were saying. Isn't there something omitted? Is there not a hiatus there about Fig. 6? A. I don't think so.

XQ483. Q. You do not think so? A. No, I would not say so.

XQ484. Then you think it is right that Fig. 6 is shown there, to skip from Fig. 5 to Fig. 7 in that very important part, when you find something quite similar in our Fig. 4, and you think it is not 2067
described there; how do you explain that? A. I explain this Fig. 6 in this way: We started by going through the loop indicated at f^1 in Fig. 4. In Fig. 5, we are still going through the loop and under the run—the threads of the run, and in Fig. 5, the latch has engaged the strand f^1 and the hook lies under the strand *g*.

Now, bearing in mind that the object of the forward thrust is to cause the latch *b* to lie down backwardly on the shank of the needle, so that on its return it may be caught by the proper thread

2068 *C. McC. Chapman. Called by Defendants. Cross.*

and made to close over the hook and close the eye, we have in Fig. 6 the obvious position following Fig. 5 of the latch passing through the loop *f* and the needle, including the latch and the hook, below the two strands *g* and *h* preparatory to withdrawing the needle in reverse direction to the position shown in Fig. 7.

XQ485. Of course, that is all theory, but it is not described there, you will admit that. There is no description of it; no specific reference to the step shown or attempted to be shown in Fig. 6? A. I
2069 think so. It is in that matter which I just read from the specification of Pogson, plus the following:

> "The direction of movement of the needle *a* is then reversed with the result that the latch is moved to a closed position by contact with the loop *f*; a piece of thread or yarn *g* is enclosed between the hook and the latch and passed under the loop *f* and formed into a loop g^1 as shown in Fig. 7."

XQ486. I will ask you again if you find any reference there specifically to Figure 6, between the
2070 reference to Fig. 5 and Fig. 7? A. As I before stated, not specifically, but obviously, it is part of the progressive movement of the needle from position 5 to position 7.

XQ487. In other words, you supply what is omitted from the description, a description of what is shown in Fig. 6, is that right, will you say yes or no? A. I can say yes and no.

XQ488. Just say yes. A. It is obvious to one skilled in the art.

BY THE COURT:

Q489. It is implicit but not explicit, is that what you want to say? A. Yes, to one skilled in the art, it is perfectly obvious, that is true.

BY MR. HODGES:

XQ490. I see, Mr. Chapman, you will not admit what the printed matter shows. Now, let us pass on to the hook end in Fig. 6; how would you say the cross thread *h* is placed there with reference to the hook, you say the hook is under the thread *h*? A. The needle at its hook end together with the latch and its pivot are beneath both the strands *g* and the strand *h*. 2072

Mr. Hodges: Will you read the question, please, and now, will you answer it?

(XQ490 read.)

A. The hook of the needle is shown under the strand *h*.

XQ491. The entire hook? A. The entire hook.

XQ492. It looks to me here as if the hook might possibly go around the cross thread *h*, but you do not think that is so? A. That is impossible, in view of the disclosure of the Pogson specification. 2073

Mr. Wooster: I mentioned last week that a certified copy of this Pogson publication was on the way from the British Patent Office. We have now received it and I now offer it as Defendant's Exhibit SS, and hand it to Mr. Hodges.

(Marked Defendant's Exhibit SS.)

2074 *C. McC. Chapman. Called by Defendants. Cross.*

The Court: This copy of yours, Mr. Hodges, is the most obscure of all.

By Mr. Hodges:

XQ493. In this Pogson patent, Fig. 3 shows the hook turned around, does it not, with the needle away from the operator in hooking into the loop *f*? A. It does.

XQ494. After which the latch is swung around, as shown in Fig. 4, and commences to work, is that right? A. I think so.

2075 XQ495. Now, will you state to the Court which side of the needle the latch is shown on in Figs. 4, 5 and 6? A. The upper side of the needle.

XQ496. Is it turned over to the right? A. Slightly.

XQ497. Is that indicated perspectively or is the needle turned or rolled over axially with the latch at the right, in its operation? A. I should say that the needle is slightly turned over to the right in Figs. 4, 5 and 6.

XQ498. Now, in Fig. 6, would you think the hook is about to catch *g* or *h*? A. The hook is not about to catch either *g* or *h*.

2076 XQ499. Which is the next cross thread pulled into the loop? A. *g*.

XQ500. And after pulling it back to catch *g*, according to your idea, *g* is pulled into *f* to form the new loop, is that right? A. That is shown in Fig. 7.

XQ501. I will now call your attention to certified copy of the file wrapper, contents and drawings in the matter of the abandoned application of John Wall Pogson, filed in the United States Patent Office, December 22, 1921, Serial No. 524,226, for an improvement in means in repairing knitted goods, have you ever seen that, Mr. Chapman?

The Witness: I am not positive that I have seen this particular one, but I have seen one which purports to be the certified copy of the file wrapper and contents of the Pogson patent and application.

BY THE COURT:

XQ502. Are you claiming it was a surface method? A. No, sir.

XQ503. You think that Pogson went through the fabric? A. Unquestionably. The description is perfectly clear. 2078

BY THE COURT:

XQ504. You see that? A. Yes, sir, but unquestionably it is a pump method, as he calls it.

(Adjourned to Tuesday, March 31, 1931, at 10:30 o'clock a. m.)

CHARLES McC. CHAPMAN, resumed:

CROSS EXAMINATION BY MR. HODGES (continued): 2079

XQ506. Mr. Chapman, is it required by the Patent Office that drawings be mathematically correct in the illustration of an invention? A. I think not. Of course, it is very desirable that they should be.

XQ507. They seldom are, though, are they? A. Well, my experience in the sewing machine division taught me that the effort there was to make them as near mathematically correct as possible.

2080 *C. McC. Chapman. Called by Defendants. Cross.*

BY THE COURT:

Q508. That means to scale, does it? A. To scale, yes, sir. Frequently, however, it was impossible to do it exactly to scale, but the effort was, whatever the scale, to make them mathematically correct.

BY MR. HODGES:

XQ509. With your experience in other divisions of the Patent Office, where the machinery is not as
2081 complex, what is the general practice? A. Why, I think it varies, but I think that the proper answer to the question is that the requirement is not that drawings shall be mathematically correct.

XQ510. Now, Mr. Chapman, you have criticized the patent in suit considerably on account of its disclosure and questioned somewhat, as I understand, whether or not it would teach the method and the ancillary features to the public; you do not seem to have applied that same test to the Pogson patent. Does not the same thing apply to any patent? A. The rules of the British Patent Office, as I have observed them from my experience, do not seem to be
2082 quite so exacting as the rules in the United States Patent Office. The drawings which we invariably get from abroad are more what I call architectural drawings. They are line drawings, in contradistinction to drawings which endeavor to portray an invention, so that you can put your hands and fingers on all the parts.

XQ511. As a rule, are you willing to say, in considering a prior art patent or publication, whether it be a United States patent or a foreign patent, that the disclosure must be full, clear and exact, and beyond reasonable doubt? A. Well, the Statute

requires that the disclosure shall be full, clear and exact.

XQ512. So it would apply to prior art references just as much as it would to the patent in suit, would it not? There is no difference in that is there? A. Well, yes, I should say so, because the patent office has no control over their prior art disclosures, such as publications and foreign patent drawings, and so forth.

XQ513. But it does have control over the United States patents, while they are passing through the Patent Office and they always apply the same test, do they not? A. Oh, yes, yes. 2084

XQ514. Would you mind letting me see your copy of the Pogson patent, would there be any objection? A. No, sir. I will give you this one.

XQ515. Do you have any other copies which you have gotten from the British Patent Office, of it? A. I am handing you the copy that I have studied.

XQ516. Have you any other printed copies of it? A. No, sir.

XQ517. You have not? A. No, sir, this is the only one I have. I am handing you now the one that I have studied.

XQ518. Very well. May I look at that one just a moment. I am wondering if you have any others anywhere else? A. No; I think that is the only one I have. 2085

By Mr. Hodges:

XQ519. You attach no significance to the fact that the latch in the Pogson patent is shown on the right hand side of the needle in all the figures, except Fig. 3 and Fig. 2, which of course are a side elevation, do you? A. I do not get the question. Will you repeat it?

XQ520. You attach no significance to the fact that the latch in the Pogson patent is shown on the right hand side of the needle in all figures, except Fig. 3 and Fig. 2, which, of course, is a side elevation; do you or do you not? A. Why, yes, I attach some significance to that. Certainly, I attach some significance to that. Do you want me to explain it further?

XQ521. Yes, I would like you to explain it further. Just what significance do you attach to it? Just what is that particular significance that
2087 you attach to that? A. The significance of these figures is that: First, that the needle is maintained in substantially—

XQ522. Wait just a moment. The Court is talking to some one else and I want him to hear all that you have to say. Therefore I wish you to wait just a moment. A. Very well, I will be glad to wait.

BY THE COURT:

XQ524. Will you repeat that answer? A. I simply say that the significance of these figures is: First, that the needle is maintained in substantially the same position, and the latch is operated in that
2088 position by the bars or threads of the run, and a further and second significance, that the needle, as a whole, is reciprocated in a single right line.

BY MR. HODGES:

XQ525. Now let me get that straight. Just what is your answer on that? A. I said that the needle is maintained in substantially the same position and the latch is operated in that position by the bars or threads of the run, and the further significance that the needle, as a whole, is reciprocated in a single right line.

XQ526. Very well. You do not consider that the position of the latch is indicative of whether the operation is through the fabric? I mean by that, in the plane of the fabric or crossing the plane of the fabric? A. Will you repeat that question?

XQ527. You do not consider that the position of the latch is indicative of whether the operation is through the fabric, in the plane of the fabric, or crossing the plane of the fabric? A. I think it is quite clear from all the figures, further figures after figure 3, that the hook, as well as the latch, goes through the fabric.

2090

XQ528. You think the hook as well as the latch goes through the fabric on these figures? A. Yes, sir.

XQ529. You discussed the question of interference procedure with his Honor in some of your direct examination, did you not? A. Yes, I discussed the interference procedure in the Patent Office with his Honor, in my direct testimony.

XQ530. Very well. I do not want to have you repeat that unless the Court wishes it.

The Court: No, I do not wish it, unless there is something special that you want to bring out.

2091

BY MR. HODGES:

XQ531. It however leads me to ask you if it is not true that an application and a patent, that happens sometimes, are put in interference in the U. S. Patent Office? A. That is true.

XQ532. Upon cases of that kind is it not a fact that the application and the patent which are put in interference in the U. S. Patent Office, must necessarily disclose the same invention? A. To the ex-

tent of the interference, yes. I would say to the extent of the interference that they must necessarily disclose the same invention, but only to that extent.

XQ533. In other words, are you not willing to say that the disclosure in which the issues of the interferences are based, must be substantially the same? A. What is that?

XQ534. In other words, are you not willing to say that the disclosure on which the issues of the interference are based, must be substantially the same; would you say that or not? A. No, I will not, because that is not true. I can not admit that because it is not a fact, in my opinion.

2093

XQ535. Well, now, if you do not think that is a fact, will you state to his Honor just what the fact is as you understand it in that regard. A. It is frequently the case that two applications will show interfering subject matter, and will also show matter which does not interfere, subject matter which does not interfere in the matter of details and other improvements which may not be in interference. Of course, they would show interfering, subject matter, but as I say they would also show other subject matter which may not be an interference.

2094

XQ536. That is true. I understand that very well. I do not think we have any quarrel about that particular thing. It is a common fact known to all people who practice before the Patent Office. A. Very well.

XQ537. That is not what I was talking about. I meant the subject matter involved in the interference on which the Patent Office itself may initiate the claim and bring the two parties together, that has to be based on a common subject matter, and must be a subject matter which is

similar. A. It may be generically the same subject matter.

XQ538. It may be generically the same subject matter; it has to be, does it not? A. Well, I say it may be generically the same subject matter.

XQ539. In the Stephens original application, do you recall whether or not a supplemental oath was filed under Rule 48, with all the claims that appear in the patent? A. As I recall the file wrapper, the filing of the supplemental oath was delayed until practically the last step in the prosecution of the Stephens application.

2096

XQ540. I didn't ask you that. I asked you if it was so. If you will just answer my questions I think we will proceed much more rapidly and get through with this examination in a short time. I simply asked you if it was so? A. Yes, it was done.

XQ541. It was done? A. Yes, sir.

XQ542. Now if you will just answer me I can get through with you in just a few minutes. A. I will be glad to.

XQ543. You are saying now that there was first proposed an interference with the Pogson application or publication, an interference with the DeMarr application? A. Yes, sir.

2097

Mr. Hodges: So that the Patent Office proposed an interference with the Pogson application and the DeMarr application, did it?

The Witness: Yes, sir, it did that.

XQ544. And you are familiar with the proceedings in that matter? A. Yes, I am familiar with that. I have read up all the matter in connection with that.

XQ545. Chronologically, you are willing to say that this DeMarr application was filed and its whole

history placed on record in the Patent Office before Mr. Stephens filed his original application? A. That is my recollection, that it was all on file in the Patent Office before Mr. Stephens filed his original application, yes. That is true.

XQ546. So that the presumption is strong that Mr. Stephens knew of the Pogson matter, is it not, when he filed his application, and some time before, as a matter of fact? A. Why, I should think that the presumption is very strong. In fact, the law charges him with having knowledge of the prior art.
2099 I should say that under those circumstances, the presumption is most strong.

XQ547. The presumption is most strong. In the supplemental oath or his original oath, he swears to what he thinks or knows, does he not? A. Presumably he swears to what he thinks or knows.

XQ548. Well, presumably? You don't mean to say you think he perjured himself, do you, at this time? A. Oh, no, I do not say that he perjured himself.

XQ549. You have attached considerable importance to one feature, and I think counsel for the defendants have that you admitted you had never found anything else, although you think you have
2100 found some other things, and that was the idea of the latch being forced down on the thread in advance, and pressing it into the hook of the needle, made to do so by the loop sliding down over the latch; do I understand you correctly about that? A. That is substantially correct. I have not found anything like that in the prior art. I have found nothing of that kind.

XQ550. Will you refer to Fig. 5 for a moment, of the Stephens patent? A. Yes, I will be glad to do so. Just a moment and I will get it out of my book.

XQ551. I will ask you, have you found it? A. Yes, I have found it.

XQ552. I will ask you, do you see that illustrated in any part of Fig. 5, and I am now just referring to the hook 1 and the latch 4 and the thread b, do you see that illustrated there? A. No, I do not. I do not see it illustrated there anywhere.

XQ553. Now, Mr. Chapman, where is the thread in the eye of the needle, what part of the eye is it in? At the top end of it? A. Directly under the hook in the top of it.

XQ554. Directly under the hook in the top of it. 2102
Would not that indicate that there is a downward pressure at that point? A. No, it would not indicate that there is a downward pressure at that point, in my opinion.

XQ555. Not where the thread is in the top end of the eye? A. No, not when the thread is in the top end of the eye, it would not, to my mind, indicate that there is any downward pressure there.

XQ556. Why would it not indicate that there is any downward pressure there with the thread in the top of the eye? A. It would not indicate any downward pressure there when the thread is in the top of the eye, because the downward pressure is acting on the hook of the needle. 2103

XQ557. You say that it is acting on the hook of the needle, the downward pressure? A. Yes; in my opinion the downward pressure is acting upon the hook of the needle, and seeking to force it down, not the other.

XQ558. If there was not any pressure there, would not the thread b be in the lower part of the eye, or somewhere in the middle? A. That would be true, providing the needle were not retracted somewhat to deflect the strand b.

2104 *C. McC. Chapman. Called by Defendants. Cross.*

XQ559. The cross thread b is bent downwardly and deflecting the thread or strand b; that is the normal position of it, is it? A. Yes, it is; that is the normal straight position of it.

XQ560. The normal straight position? A. I would say that that is the normal position of it at that point.

By Mr. Wooster:

XQ561. What do you mean now when you say "downward"? Do you mean towards the point of
2105 the needle, or do you mean towards the plane of the goods or do you mean in the picture itself?

Mr. Hodges: In the drawing. In the plane it would be—

The Witness: (Interrupting) Lengthwise.

Mr. Hodges: No, it would be bent toward the bottom of the sheet.

The Witness: In the plane of the goods.

Mr. Wooster: In the plane of the goods?

Mr. Hodges: No, I mean looking down on it.

By Mr. Hodges:

2106

XQ562. Is not that what you meant there? A. That is what I understood you to mean in the beginning. With reference to this big figure right here.

XQ563. It would be bent towards the bottom of the sheet? A. It would be bent towards the bottom of the run, or rather, bottom of the fabric, or the bottom of the sheet.

XQ564. You have, I believe, and if I am not correct will you kindly correct me, stated that there was very little about the holder in the decision of

the Stark case; are you sure you read that that way and that you are right about that? A. My recollection is to that effect. I read that a long time ago. It is my impression that there was very little said about the holder, comparatively.

XQ565. You think there was very little said about the holder comparatively? A. Yes, sir. With all the testimony that was adduced in that case, there was very little said about the holder compared to the matter that was placed in in regard to other things. I think that the holder was given a very minor part in that case. That is my recollection of it. As I said before, I read that a long time ago, but that is my recollection of it as I now recall it. 2108

XQ566. You think you might be mistaken, though? A. I have no reason to think so at this time.

The Court: I think he said as far as the plane of the fabric was concerned, I thought he meant it was below the plane of the fabric.

The Witness: No, I did not say that.

BY THE COURT:

2109

Q567. You meant along the line of the plane of the fabric towards the person who is working it, is that right? A. Yes, sir.

BY MR. HODGES:

XQ568. Are you aware that the egg cup was involved as a holder in that suit, and that the method was tried out on the proposition of stretching over that holder, do you recall that? A. I do not recall

2110 at the present moment whether the egg cup was specifically mentioned or not.

Mr. Hodges: Your Honor, I will turn that over to you now, if you care to look at it.

(Document handed to the Court.)

XQ569. Do you know how it was in the Pittsburgh case before Judge McVicker, whether the holder and the other features set forth in the claim in suit were involved? A. I have made some memoranda of salient points in that case and I find with
2111 reference to your statements, in page 2 of the record—

XQ570. I do not care to have you go into everything there. I just asked you a certain question. It is all right to have it, but the whole record is here before the Court.

The Court: Did the Judge mention it in his opinion?

Mr. Hodges: Yes, I think he did, your Honor.

The Court: What does the witness say, was it before him there?

The Witness: Oh, yes, I think it was unques-
2112 tionably, your Honor, brought out, but my notes indicate that the greatest stress was laid upon the magnetism and other characteristic features of the needle.

By Mr. Hodges:

XQ571. Mr. Chapman, will you refer to the drawings, sheet No. 2 of the Canadian patent to Ortega, No. 225,612, dated the 7th day of November, 1922, and show the Court whether or not Ortega is operating right on top of the cross threads or

not, in your opinion? A. This is the same subject matter that I directed your Honor's attention to the other day—

Mr. Hodges: It is a certified copy, your Honor.

The Court: Ought it not be marked in some sort of way?

Mr. Hodges: I would like to offer that.

The Court: You better mark it as an exhibit anyhow.

(Marked Plaintiff's Exhibit 36.)

2114 The Witness (Continuing): With reference to the British patent to Ortega, it is a publication only. Figs. 8, 9 and 10 illustrate the mode in which the bars of the run indicated by these dots are, you might say, assailed. The latch in this particular case is peculiar; it is curved like a deep spoon.

BY THE COURT:

Q572. Like a hospitable end? A. Yes, and it is so formed with reference to the hooked end of the needle, that there will be a V-shaped space between the end of the pivoted latch and the end of the 2115 needle. That enables the needle to be thrust in a straight line against the runs of the ladder, as shown in Fig. 8. That is a straight thrust through the fabric for a short distance, as shown in Fig. 9. Then when the thread, which has been caught or pushed into the jaws at the end of the needle has gone up behind the hook, as shown in Fig. 9, the needle is then turned over into the vertical position shown in Fig. 10, and withdrawn. Thereafter, as shown in Fig. 11, the needle is thrust

through the loop which has slid back on the shank of the needle, as shown at Figs. 8 and 9. In so thrusting through, it slides along the surface of the material or the bars of the run and the material behind the run.

By Mr. Hodges:

XQ573. In order to clear the latch? A. In order to clear the latch. The latch in this instance, however, is loop-manipulated, the same as in Pogson,
2117 the same as in Stephens, in order to force the latch back to its cooperative position with the hook of the needle.

XQ574. Now, does that help translate the Pogson disclosure? A. Not in the slightest.

XQ575. I did not think you would admit it. You said in your testimony that frequently we resort to the file contents; don't we always do that in a suit? A. Why, yes; it depends altogether on what you want to get.

XQ576. You want to get all there is, and wish for more sometimes. A. It is almost an invariable practice.

XQ577. Did you actually hear of the sliding
2118 latch, for instance, or even a pivoted latch, being disclosed in any patent or publication prior, we will say, to the Pogson and Ortega publications? I mean, where the whole thing was shown, either finger or other method in the repair of a knitted run? A. What period is involved in your inquiry?

XQ578. Any period prior, say, to the Pogson or Ortega dates, say about 1921 or 1922,—and I might add to the previous question, to get it all in one, was stretching the fabric over a holder. A. Yes, in two instances, the pivoted latch needle was held to be a complete answer for that particular sub-

ject matter that you referred to, and I think specific reference to the decisions of the Comptroller General—

XQ579. One minute, Mr. Chapman, I am coming to that. Did I put the question that way, did I say any patent or publication only? Or do you regard that as a publication? A. You asked me if I had heard of it.

XQ580. No, I don't think I said whether you heard of it. I am trying to get you to boil it down to something concrete, that you can find in one disclosure, one patent or publication. Putting several together does not go with the courts, because everything is made up of many old features put together with some new feature added to make it patentable. 2120

The Witness: If I understand the question properly, my answer still is that that disclosure was made in those two decisions with reference to the British patent of 1903, in which it was pointed out that the old patent employed that old needle of the British patent employed for the purpose of making rugs, and that was considered to be the equivalent of the disclosures of Pogson and Ortega. 2121

XQ582. Did either Pogson or Ortega follow that up with any effort to differentiate their method from what was enunciated by the Comptroller General in his opinion? A. I do not know.

By Mr. Hodges:

XQ583. You are familiar with two Finch patents, are you not? A. I am particularly familiar with the earlier Finch patent.

2122 *C. McC. Chapman. Called by Defendants. Cross.*

XQ584. You are also familiar with the Finch patent of November 5, 1929, No. 1,734,423, have you a copy of that? A. That is the second copy. I have read it over, yes.

XQ585. Are you familiar with the Van Dyke patent, No. 1,745,462, February 4, 1930, which issued to the Kayser Hosiery Motor-Mend Corporation of Wilmington, Delaware? A. 1,745,462, yes.

Mr. Hodges: We would like to offer that in evidence, as Plaintiff's Exhibit No. 37.

2123 (Marked Plaintiff's Exhibit 37.)

BY MR. HODGES:

XQ586. Does that Van Dyke patent seem to be the one under which defendants are operating, or one of the several patents they are operating under? A. I think so, that is my understanding.

XQ587. Now, in Fig. 6 of this patent, perhaps you will notice the same deflection of the first thread indicated perhaps by the letter *c*, maybe *b* that we noted in Fig. 4 of the patent in suit? A. Yes, I have noted that.

2124 XQ588. Now, the handle is off at the right, is it not? A. Yes.

XQ589. Very much like Fig. 5 of the patent in suit; in fact, doesn't it look like a reduced size Chinese copy of Fig. 5 of the patent in suit? A. The positions are approximately the same.

XQ590. That indicates a gyratory motion, does it not, according to your theory? A. No.

XQ591. You have said so, in connection with our Fig. 5, did you not? A. No.

XQ592. You did with Figs. 4, 5 and 6? A. Taking them altogether, yes.

XQ593. There isn't much difference in the position of the handles in Figures 5 and 6, you admitted yourself in the patent in suit, is there? A. Is that a question? I thought it was a declaration. A. That is correct.

XQ595. Now, another thing I would like to call to your attention is this: You have been trying to show the Court that a pivoted latched needle and a sliding latched needle are considerably different, will you refer, in this Van Dyke patent to Figure 1, for instance; what kind of a latched needle do you see there, at *b* and *c*? A. It looks 2126
like an ordinary pivoted latched needle.

XQ596. Now, will you refer to Fig. 7 of the Van Dyke patent and state what kind of a latch is shown there? A. A pivoted latch.

XQ597. Pivoted? A. Oh, Fig. 7? Pardon me, that is a sliding latch. I looked at the wrong figure.

XQ598. And so described, is it not? A. Yes, that figure was inserted after the application was filed, by way of amendment.

XQ599. By way of amendment, how long after it was filed? A. It was by way of amendment. My recollection is that it was inserted after the 2127
application was filed.

XQ600. And grafted on the application? They actually added another form; did they do that in this patent, after they filed the application? A. Yes, if you choose to term it such.

XQ601. Is it customary for the Patent Office to allow that? A. That, as I understand it, was simply to demonstrate the versatility of the operating mechanism.

2128 *C. McC. Chapman. Called by Defendants. Cross.*

BY MR. HODGES:

XQ604. In this Van Dyke patent, you find reference there to stretching over a holder? A. I do not find it here.

XQ605. Will you refer to line 113 on page 2 of the Van Dyke patent, and look at that? A. Just a moment. Yes, I find that reference to the stretching here.

XQ606. It says over an egg cup. A. I find this on further down. It says at line 123: "Preferably
2129 and in the case where a finely woven stocking is being repaired, it may be stretched over a specially designed holding frame. An embroidery frame or an egg cup have been found particularly convenient as a fabric holding means as they permit an easy advancing of the fabric in the case of a long run, and as the material can be stretched rigidly a firm tensioned section of material is exposed for operation."

XQ607. Now, did you see anything about a forward movement used in this patent? I refer you to line 84 of the same page. A. Yes, that refers to a forward movement. During the operation that
2130 is so. During this operation, and considering the case where a pivoted latch needle is used, the needle functions conventionally in that in its forward movement when inserted between the loop which defines one end of the run and the first unlooped thread or ladder of the run, the loop slides over the free end of the latch.

BY THE COURT:

XQ608. Where is that? A. That is beginning at line 84, and goes down to line 91.

XQ609. Is that in claim 23? A. No, sir, that is in the Van Dyke patent No. 1745462, your Honor.

XQ610. On page 2? A. Yes, sir, on page 2, second column.

XQ611. I see where it is now. Go ahead.

BY MR. HODGES:

XQ612. Will you go ahead and explain that? A. I will repeat that for your Honor.

The Court: I did not hear that.

2132

The Witness. During this operation, and considering the case where a pivoted latch needle is used, the needle functions conventionally in that in its forward movement when inserted between the loop which defines one end of the run and the first unlooped thread or ladder of the run, the loop slides over the free end of the latch.

BY MR. HODGES:

XQ613. Now, do you attach any significance at line 87 to the statement, line 88, I think it is: "When inserted between the loop which defines one 2133 end of the run and the first unlooped thread or ladder of the run, the loop slides over the free end of the latch"? A. Yes; I think that has reference to the normal operation of a latch needle being thrust through the fabric, pivoted latch needle.

XQ614. Then again at line 55, on the left-hand column of that page: "In operation, in assuming that the motor is running, and with the parts in the position shown, the needle is inserted through the fabric which has been stretched to dispose the

2134 *C. McC. Chapman. Called by Defendants. Cross.*

run in a straight line with the hook end of the needle engaging the last formed loop at the end of the run"? A. Yes.

XQ615. I understood you to say that you could not do that in the Stephens patent? A. I said no such thing.

XQ616. Well, what did you say? A. I said that as the structure of the invention is disclosed in the Stephens patent, there is no indication whatever that the needle was intended to be thrust through the fabric. On the other hand, everything indicates
2135 that it is intended to slide along the fabric at the run, for the purpose of engaging the threads of the run.

XQ617. And yet the Stephens needle is the picture of the one shown in Fig. 1 of the Van Dyke patent, is it not?

The Witness: I can not say from a comparison of the figures. I say I can not say that it would be the same. I would say no, from a comparison of the figures. I do not think these needles are at all alike. That is my opinion.

2136 XQ619. Well, of course, that is not a photograph of it; I did not mean that. It is a hook and latch needle shown there. You have already stated that it is the same in the other; have you not? A. It is a conventional pivoted latch needle, of course.

XQ620. It is a conventional pivoted latch needle? A. Yes, I think so.

XQ622. I am referring to line 99 on page 2. A. "This successive reaching forward"—is that what you mean? Is that what you have reference to here?

XQ623. Yes. I want you to read that into the record. Please read that into the record, starting off with line 99. I would like to get that clear. A. "This successive reaching forward for the next ladder thread, engaging the same, forming a loop by drawing the engaged thread through the preceding loop and then casting off the preceding loop is continued to the end of the run as is well known in relooping operations, and needs no detailed description."

XQ624. In getting this patent through, did you hear one of the witnesses say that it was necessary 2138
to go to the United States Patent Office in Washington, D. C., to demonstrate this thing, three times before the Examiner, before the Examiner would grant the patent? A. I do not recall.

XQ625. Is it customary to have these interviews taken down stenographically between the lawyers and the Examiner? A. Not to my knowledge, it is not.

XQ626. It is not, to your knowledge? A. No, sir.

XQ627. Are you in a position to know whether it is or not? A. Yes, sir, I am.

XQ628. You never heard of that being done? A. 2139
No, sir, I never heard of a stenographic record being taken of these discussions between the Examiner and the attorneys.

XQ629. Mr. Chapman, you spoke about the Kraemer Mill, and you spoke about seeing some Stelos needles there. Did you actually see them, or hear that they were there, when you made that visit on February 6th, 1931? A. Let me see. I will have to look through my memoranda, and see what is shown here.

2140 *C. McC. Chapman. Called by Defendants. Cross.*

XQ630. Go through. You wish to refer to your memoranda? A. Yes.

XQ631. Go ahead, look it up; I do want you to be exact about this. A. My recollection is that I saw them actually; that I saw these two Stelos needles in the Kraemer Mills.

XQ632. You saw these two Stelos needles in the Kraemer Mills yourself? A. Yes, sir, I did; that is my recollection.

XQ633. When you were traveling around, did you meet the two witnesses that came up here from
2141 Nazareth, Pennsylvania? A. Came up here?

XQ634. Mr. Hartzell and Mrs. Rohrbach. A. Answering that I would say that I did at that time. My first interview was with Mr. Hartzell, and he brought Mrs. Rohrbach down to his office at that time.

XQ635. Your first interview was with Mr. Hartzell and Mrs. Rohrbach was present at that interview? A. That is correct.

XQ636. Did you make the discovery of these two witnesses yourself? A. No, sir. They had been ascertained quite a bit before that time. I did not find them out first myself.

2142 XQ637. Then you knew that they would be there when you went there? A. Yes, I did.

XQ638. There is just one line here. I can not understand the pertinency of it. If I remember the expression, you said "There are a good many young college graduates passing on these cases in the Patent Office". Do you refer to the Textile Division in 1923? A. Not specifically.

XQ639. Have you had much experience with the Textile Division? A. Yes, sir.

XQ640. Do you know Mr. Thurber, of that division? A. Mr. Thurber of the Textile Division?

XQ641. Yes; do you know him? A. No, I do not recall him; I do not recall Mr. Thurber.

XQ642. You do not remember him as the principal examiner of that department? A. I do not recall Mr. Thurber. My experience with the Textile Division per se was while I was in the Patent Office as a member of the examining corps.

XQ643. Did you know Mr. Lovell, assistant in that division? Did you know him? A. Mr. Lovell? The name is familiar; I do not quite place him.

XQ644. You have no reason to believe that either Mr. Thurber or Mr. Lovell had only been there a 2144
short time when you made that statement? A. I made no reference specifically to anybody.

XQ645. You did not mean any reflection on the work of the Patent Office in connection with the Stephens case, did you? A. Oh, no; I did not mean any reflection on the work of the Patent Office in connection with the Stephens case.

REDIRECT EXAMINATION BY MR. MORRIS:

RDQ646. Mr. Chapman, will you turn to line 84, page 2 of the patent to Van Dyke, No. 1745462. A. Yes, sir, this is the second page of it here, I be- 2145
lieve.

RDQ647. On page 2, line 84, that is the paragraph to which you have been examined in part? A. Yes, sir, that is the one which we were talking about a while ago.

RDQ648. Let us examine that paragraph now as a whole. A. Very well.

RDQ649. Does or does not that paragraph implicitly show a distinction between the functioning of the pivoted latch needle and the other needles? A. Yes, sir, it shows a distinction between the func-

tioning of the pivoted latch needle and other needles. There is specific reference made to it there.

RDQ650. What is the word that is used in contrast in the paragraph, with "forward movement"? I call your attention there to line 91 and to the fifth word in the sentence beginning on line 91. A. That is "reverse movement"; I mean "reverse direction". I was looking at a line or so above that, the proper words are "reverse direction".

RDQ651. That is line 92. The fifth word in line 91 is what? A. The fifth word in line 91 is "raised".

2147 RDQ652. Is there a distinction between that, any difference in meaning between the word "raised" and the words "hold back", may there be a difference in the directional movement of the two, the words "hold back", as found in the Stephens patent, and the word "raised" as found in the Van Dyke patent? A. I should say there is a radical difference in the two.

RDQ653. One indicates the direction of movement specifically with regard to that? A. Yes, sir.

RDQ654. Now will you also look at line 94 on page 2 of the Van Dyke patent. A. Very well.

RDQ655. Is there any repetition of the function of the pivoted latch needle as disclosed four times

2148 in the Stephens patent? A. Yes, sir, it says here "The latch in the meantime reaches for and grasps the next thread of the ladder which is held by the closing of the hook until a new loop is formed which formed loop is drawn through the previous loop which is then cast off the needle".

RDQ658. Does the disclosure in the Van Dyke patent of a pivoted latch needle, and a sliding latch needle, show equivalency of means or merely two means of arriving at the same result; does that show that or not? A. I see no suggestion of equivalency. It strikes me that they are quite different.

RDQ659. Identity of function or similarity of function? A. It is merely a utilization of two instruments in connection with a driving mechanism.

RDQ660. I think you have already testified in your direct examination, about the paragraph beginning with line 24, or rather, line 23, page 2, in which you stated that there are two distinct differences in the function of the pivoted latch needle, and the other latch needles? A. Yes, sir.

RDQ661. You were asked with regard to a statement in connection with a supplemental oath by Mr. Stephens as to whether the supplemental oath had not been taken, and the inference that I drew from the questions of my learned brother, Mr. Hodges, was that that implied absolute verity. I ask you whether the statute did not require the oath to the original application? A. It does. 2150

RDQ662. I ask you whether we did not find yesterday, some inaccuracies with regard to the statement of prior art on the first page of the patent, notwithstanding the oath of the inventor? A. A great many of them.

RDQ663. Does the supplemental oath given under the rules of the Patent Office, mean that that has greater verity or accuracy than the original oath? A. No sir, it does not; it does not; certainly not. 2151

The Witness: I might add this. It is my distinct recollection that the practice was with reference to supplementary oaths made up while I was in the Patent Office. It grew up while I was there, and there were several reasons for it growing up. It just started to grow up while I was in the Patent Office.

RDQ664. Will you explain that to the Court. A. It was brought out by these peculiar circumstances:

It frequently happened during the transaction of an application, and as a result of amendments putting in different claims that the subject matter claimed oftentimes would be somewhat different from that which was originally covered by the oath required on filing the application.

Oftentimes it was suggested that that was the invention of the attorney and not, probably, the invention of the applicant who filed the application.

Therefore, in order to bring about a proper condition in the application, a supplemental oath was
2153 required from the applicant. He was required to state specifically that the invention now claimed by the amendment was his invention before he filed the application, and was intended to be covered thereby.

The Court: It was the result of massage?

The Witness: It was because of the peculiar circumstances that occurred in the transaction of applications in the Patent Office. In the work on those applications, it frequently occurred in the manner which I have described. That was the reason for the formulation of this rule.

2154

By Mr. Morris:

RDQ665. My friend, Mr. Wooster, suggests that I ask you this question, which I deem a proper one: Whether, even if the amendment be accompanied by supplemental oath or followed by a supplemental oath, whether that is conclusive against the public with regard to the insertion, whether that would be a bar to a subsequent judicial determination in the Court, if the question be raised? A. No, it would not.

RDQ666. Or if a subsequent judicial determination of the Court, if the question be raised, would be proper under the circumstances? A. The latter is a correct and proper construction. That is the fact.

RDQ667. Does the supplemental oath act as a bar to the public? A. It does not. It was simply to satisfy the Patent Office.

RDQ668. I now request that you turn to Figs. 3 and 4 of the Pogson patent. A. All right.

RDQ669. I ask you whether the movement of the needle indicated in Fig. 3 is a disclosure with respect to the original insertion in the first loop only, or whether it is likewise applicable to all subsequent loops formed in reknitting the run or raveling the stocking? A. My understanding of that is that Fig. 3 shows the position of the needle peculiar to the beginning of the mending operation. 2156

RDQ670. That is to the original insertion of the needle? A. Yes, sir.

The Court: In Pogson?

Mr. Morris: Yes, sir, we are now looking at the Pogson patent.

By Mr. Morris: 2157

RDQ671: Which is equally true of the sliding latch needle, of Finch, if it is to be inserted in the first loop? A. Yes, sir.

RDQ672. It does not have to make that move in another loop? A. No, sir.

RDQ673. And it does not have to make that movement in successive loops once the loops are off of the needle? A. That is correct. That is only for the first insertion. It does not have to be made in the others.

2158 *C. McC. Chapman. Called by Defendants. Redirect.*

RDQ674. Yesterday you were asked by Mr. Hodges, whether there was any reference to Fig. 6 in the specification of Pogson; I ask you whether there is not included in the paragraph beginning line 28 of page 2 of Pogson, found some reference to Fig. 6? I think you said there was no specific reference; I asked you whether there is any kind of reference in the fourth line of that paragraph. A. My answer, as I recollect it, was, referring specifically to Fig. 6, there is no doubt about the fact in my mind that Figure 6 is included within the
2159 reference, "The series of views, Figs. 3 to 8, inclusive".

RDQ675. You are reading from the 31st and 32nd line of page 2 of the Pogson patent? A. Yes.

RDQ676. I ask you if you find similar language in lines 16 and 17 of the same page? A. Yes.

RDQ677. Will you read me what is there said, beginning "Figs. 3 to 8, inclusive"? A. "And Figs. 3 to 8, inclusive, illustrate a method of proceeding for effecting a repair of a ladder in a knitted fabric under this invention."

BY THE COURT:

2160 RDQ678. That covers Fig. 6, the missing figure? A. That covers Figure 6.

BY MR. MORRIS:

RDQ679. It will be observed by lines 28, et seq.: "One manner of using the needle for repairing the ladder *e* shown in the fabric in Fig. 1, is illustrated in the series of views, Figs. 3 to 8, inclusive." I ask you whether Figure 1 of Pogson discloses a stretched or unstretched fabric? A. Stretched.

RDQ680. So far as the Stephens drawings 4, 5 and 6, are concerned, is there or not any material difference with respect to the stretching? A. No, sir.

The Court: You mean difference vis-a-vis, the Pogson pictures?

Mr. Morris: Between Fig. 1 of Pogson and 4, 5 and 6 of Stephens,—I am dealing now with the drawings only.

BY MR. MORRIS:

2162

RDQ681. This morning you called my attention to a patent that had been omitted yesterday in which specific reference—I think you did not give me the number or name, but it was a patent showing the shell and operation of the needle through the end of it. A. I referred to the British patent to Dickson, et al., 24,464 of 1914.

The Witness: Your Honor will note that it is a hand operated machine, employing pivoted latched needles in gangs. They operate in a frame, which is inclined to the vertical. Surrounding the plane of operation, is a cylindrical holder, open at the end, through which the needles project. During the operation, the fabric is stretched over the end of that open holder, which, as you will note, is just like a cup or a hollow cylinder. 2163

BY THE COURT:

RDQ682. And they work from the inside? A. They work from the inside up through, and per-

form their operation exactly as an ordinary pivoted latched needle.

RDQ683. The latches are so disposed, without strain or magnetism, that they open and close with reasonable facility, because they are pointing up? A. Yes, sir, the latch is normally open, because of its vertical position.

RDQ684. And acts because of gravity? A. Yes, and there is a latch closer which is indicated at *h*.

RDQ685. What is this patent, for a hand knitting machine? A. That is for mending knitted goods.

2165 RDQ686. A hand machine for mending knitted goods? A. Yes.

By Mr. Hodges:

RDQ687. It is a darner, is it not? A. It is in a sense, a darner, yes.

RDQ688. You put a thread in, don't you? A. Yes. The preamble says:

> "This invention relates to knitting machines and has for its object to provide a smooth and efficient machine for mending holes in stockings—or by adding new portions therein." The
> 2166 significance is that it has a hollow cylindrical portion for the purpose of mending a hole.

By Mr. Morris:

RDQ689. Wholly without regard to the patent, specifically, or any other patent specifically, I ask you whether in the repair of runs or raveling in a stocking it is or is not essential that the hook or needle go through the fabric? A. To a limited extent, yes.

RDQ690. What do you mean by a limited extent? A. The whole needle does not go through the fabric, it goes to the depth of the latch when it is thrown back, at least that far.

RDQ691. It is essential that the hook go through the fabric? A. Yes, it must go through the fabric in order to enable the loop which passes upon it to throw the latch back, and when I say it is essential, I mean that the operation of the ordinary pivoted latched needle is that the needle penetrate the goods to a distance measured by the length of the latch plus the distance from the pivotal point to the end 2168
of the needle.

RDQ692. A sliding latch needle likewise goes through the fabric at least to the extent of the hook, does it not? A. Yes, but not necessarily to the extent of the length of the latch.

RDQ693. And far less, double the length of the latch I take it? A. Oh, no.

RDQ694. I am not sure I asked you yesterday or not, to enumerate for me the differences between the steps in the method of claims 23 and the steps of the commercial method of plaintiff, so I will ask you to do that briefly, if you will? A. Comparing the two methods, the commercial method of the 2169
plaintiff, as I understand it, involves the reciprocation of the needle at quite an elevation from the surface of the material. That elevation may vary, but the proposition is that the needle shall penetrate the work in contradistinction to sliding along the surface of the work. The operation of the latch is that primarily it is caused to fly open, so that when the needle is retracted, the latch will be open preparatory to the next descent through the fabric. As the needle is retracted from the fabric, the loop which is lying in the groove of the needle is caused

to slide under the end of the pivoted latch, swinging it over on its axis and throwing it into contact with the hook point.

Now, whether during that operation it forces the next bar into the hook, to my mind, is, for this particular description, immaterial. The point is that the hook catches the strand of the thread which is enclosed between the two elements, the point of the hook and the latch, and in that condition is withdrawn, made into a loop, passed through the preceding loop and up over it into a position so that the
2171 needle may be sliding through it again, and then repeat the operation. As I understand the method of the Stephens patent, and without reference to the particular phraseology of the claim, which is—

RDQ695. As distinguished from his commercial method, you mean? A. Yes, the commercial method is the one I have just referred to. The operation seems to be to carry the needle sufficiently far forward to cause the hook to pass under one bar while sliding through the loop, which it has previously caught. The depth of that penetration seems to be only the diameter of the yarn or bar under which the needle is traveling. The elevation of the needle above the surface of the fabric is controlled by the
2172 notch 5 in the needle shank, and the loop which surrounds the needle shank, and on one side lies between the needle shank and the guard, which latter holds frictionally the loop.

Now, the object of that particular operation is to prevent the loop from rising too high, having too much, so to speak, headway, which, if it had, would leave the loop lying loose on the shank of the needle with all the possibility of its failure to get under the end of the latch and throw it over on its axis, as the retraction of the needle takes place.

BY THE COURT:

Q696. Stretching would keep that also from doing that, would it not? A. Stretching would do it, if the elevation were sufficient, but if the elevation were too great, it would stretch that loop beyond anything desired, but, as I think I pointed out in my testimony in the beginning, the operation of these pivoted latched needles is such as to make non-uniform work, because the operation of the needle with reference to the loops and the bars cannot be controlled by hand. The result is that the 2174
reknitting of the fabric or the relooping of the fabric in the attempt to restore it to its original condition results in a rough finish of the run and that rough finish of the run requires subsequent treatment, such as smoothing it out, I believe they call it with a stiletto, although I never could see just why, the idea is they could take a rounded or a blunt instrument, and rub it over the surface of the run so as to give it the general appearance of the surrounding fabric.

From that and all that I have been able to discover in the Stephens patent, I take it that the object is to hold the needle just as close to the fabric as possible, so as not to enlarge the loop, so as not 2175
to stretch it too far, and yet enable the successive runs of the ladder to be drawn into loops and interlooped with previous loops.

BY THE COURT:

Q697. You gather that surface operation from the drawings only, or do you gather it also from the use of the word "laterally"? A. I gather it, your Honor, from several different sources. First, from the drawings: secondly, from the description

of the patent, which has reference to the lateral movement of the needle relatively to the run.

Q698. That means the side, doesn't it, laterally does, naturally? A. That means extending to or tending to extend from the side, and also from that portion of the description to which I just referred, setting forth the function of groove 5 in the shank of the needle, and also the function of the guard for preventing the enlargement of the loop during the operation of the needle.

Q699. Then what you would say,—summarizing
2177 it in one metaphorical word, the method disclosed of claim 23 of the plaintiff's patent is, in effect, a fishing method, whereas the other is a punching method, would that express it? A. I think that expresses it very well.

By Mr. Morris:

RDQ700. In distinction between the drawing and the commercial method, I understand that to be? A. Yes.

RDQ701. Have you drawn any distinction between the method of stretching, as disclosed by the patent of Stephens and the commercial method of
2178 stretching employed by Stephens? A. Well, of course, in the Stephens patent the matter of stretching constantly for the purpose of getting the right conditions at the right times is not referred to at all. That is entirely foreign to the disclosure.

RDQ702. How many stretchings are there disclosed in the Stephens patent? A. Only one, the primary stretching.

RDQ703. How many are there disclosed in the commercial method, that is, taking the one for the insertion of the needle, are there any others after

the needle is inserted? A. Oh, yes, an indefinite number. There is a plurality, and as the Court has called it, a plastic method.

RDQ704. Passing from that to Hartzell, is Hartzell's method that of the Stephens commercial method or the method of claim 23 viewed in the light of the specifications and drawings of Stephens? A. It is the commercial method.

RDQ705. Is there any difference in the angle of incidence of the needle to the plane of the fabric, as between Hartzell and DeMarr? A. I would like to see that DeMarr patent. My recollection of De- 2180
Marr is what we call now a surface method, rather than the punching method.

RDQ706. That is correct, as I recollect.

The Witness: Hartzell's is the punching method.

RDQ707. Will you turn to Pogson again, the several figures, Mr. Chapman, I think you testified that you found in Figs. 4 to 8, inclusive, a parallelism between the positions of the needle in those several figures? A. I did.

RDQ708. And did you or did you not testify as to what that indicated with regard to the line of 2181
reciprocation in the several movements of the needle? A. I do now testify that that indicates to me a right line reciprocation of the needle, the reciprocation unchanging as to angularity.

RDQ709. Involving how many movements in such methods or process of Pogson? A. Figs. 4 to 7, inclusive, I think complete the method.

RDQ710. I do not mean to measure part way in one movement and part way in the other, but from the beginning of the downward or forward stroke

in Pogson, is there any change of direction? A. No, sir.

RDQ711. Then, when there is a reversal, is there any change of direction until the backward or rearward or upward movement has been completed? A. No, sir.

RDQ712. Then it is moved over the loop and then repeating the operation? A. That is the idea. Fig. 8, as I understand it, illustrating the beginning of the second operation.

RDQ713. Does that indicate how many move-
2183 ments, two or four in the process, apart from the lifting up, over and around the thread? A. Two movements.

RDQ714. Of the needle? A. Of the needle.

REBUTTAL PROOFS.

Photostatic copy of advertisement of the final decree in the Evelyn Stark case in The Textile World of October 29, 1927, offered and marked as Plaintiff's Exhibit 35.

2184

AUBREY C. DICKSON, was called as a witness on behalf of the plaintiff in rebuttal, being previously duly sworn, testified further as follows:

DIRECT EXAMINATION BY MR. GILLIGAN:

My name is Aubrey C. Dickson. I am the secretary and treasurer of the Eastern Stelos Company. I have records in connection with the licenses to the Kraemer Hosiery Mills, Nazareth, Pennsylvania.

On January 17th, 1928, we leased one unit to the Kraemer Hosiery Company, at Nazareth, Pennsylvania, for the term of one year, at a rental of $50. per month, per needle. On March 5th, 1928, we leased a second unit to the Kraemer Hosiery Company, in Nazareth, Pennsylvania, for a period of one year, at a rental of $50. per month.

On January 17th, 1929, we renewed the lease of the No. 1 needle for a period of one year. About that time the rental prices changed. On March 11th, 1929, we cancelled the lease of January 17th, 1929, on the No. 1 needle. The No. 2 needle lease 2186
had expired on March 5th. I then added the two together and leased the two needles to the Kraemer Hosiery Company for one year, from March 11, 1929 at $25. each per month. That lease ran to expiration on March 11th, 1930. From then on, there have been no further leases with the Kraemer Hosiery Company of Nazareth, Pennsylvania.

There should not be any Stelos needles now in the Kraemer Hosiery Company of Nazareth, Pennsylvania, from the source of the Eastern Stelos Company. These needles should have been returned at the expiration of that lease in March, 1930. I have the licenses here in my hand to show, in case it is desired to see them. 2187

From February 28th to March 5th, 1927, the Eastern Stelos Company staged a public demonstration of the Stelos repair process in the department store of William Laubach & Sons, at Easton, Pennsylvania.

It was part of our lease with the Kraemer Hosiery Company to teach them how to operate the Stelos needle and system. We agreed to teach them if they would send one of their employees to our place in Philadelphia, to train them in the oper-

2188 *Aubrey C. Dickson. Called in Rebuttal. Direct.*

ation of our method. When both units were leased in 1928, January and March, Mr. Harold Hartzell, son of Mr. Calvin Hartzell, who testified here, sent down two operators to our plant for the purpose of being trained in the operation of the Stelos method. He sent one operator each time. He sent, altogether, two operators for training during that period. The training for each girl lasted two weeks. Mr. Hartzell was not there all that time; he brought the girls down to see that they were located properly in the city, and then returned.

2189 I was in Court the day Mr. Hartzell and Mrs. Rohrbach testified. I heard all their testimony. As a result of the hearing of that testimony, I made an investigation.

Knowing what I do about the reception given to the Stelos needle and method by the various mills throughout our territory (Nazareth is in my territory. We control Eastern Pennsylvania, Southern New Jersey and Delaware.) I could not believe that all that testimony was true, so I endeavored to make an investigation to find out what the truth was. I went to Nazareth on Friday, March 27th, and I learned in Nazareth that there

2190 was a young lady there who had worked in the Kraemer Hosiery Company, in the mending department for a number of years. Her name is Miss Anna Kolbe.

I called on Miss Kolbe at her home and I asked her whether she had been employed at the Kraemer Hosiery Company and for how long; if she had worked in the mending department of the mill, mending runners while employed there, what type of needle she used in mending runs; what method she mended the runner, meaning how she held the stocking while mending it if she would be willing

to testify in a patent case in New York City as to what she actually knew as to the manner in which she actually mended hose in the Kraemer Hosiery Company, during the time of her employment there. She is here in Court.

ANNA KOLBE, called as a witness on behalf of the plaintiff in rebuttal, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GILLIGAN: 2192

I live in Nazareth, Pennsylvania. I am not employed at this time by the Kraemer Hosiery Company. I first went to work for the Kraemer Hosiery Company, January 15th, 1908. I had had mill experience before that. I worked for Fred Wunderle in Nazareth. When I went to work for the Kraemer Hosiery Company, I was given general work, mending, stamping and shipping. I continued at that two years. I had charge of that department. I was put in charge of that shortly right after I went there. After that I was forelady taking care of the repairers; that was in the finishing 2193
department. In that department I repaired hose and mended them, mended runs in the stockings. I remained as forelady in that department six years. While working in that department I had about twenty-two girls under me. Sometimes twenty-two and sometimes a little more to help out when we were busy. That was for six years, about 1916. After that I was transferred down to the shipping department, in charge of the shipping department. I was in charge of the shipping department for seven years. I had about fif-

2194 *Anna Kolbe. Called in Rebuttal. Direct.*

teen employees under me in the shipping department. We repaired runs in that department. When we found some we repaired them, we picked them up. We did repairing down there. There were about five or six girls there. I was in charge there for seven years until I was hurt with a bruised knee-cap, then I was laid up for about twenty-two weeks. I did not work at the mill at all for twenty-two weeks up to about August or September of 1923. After that I went to the office and saw Mr. Schmidt. He said I was not able to
2195 be on my feet, but I could take mending. I became a mender in the gray work department, where they use raw silk. I remained there for a few weeks as a mender and took charge of the menders. When I say menders, I mean menders of runs in hosiery. I remained in that department six years. In that department about nineteen girls were working under me. I was put off my position on March 3rd, 1929, and I was put on mending for six months, to November 18th, 1929. I was not forelady any more. I was laid off for four days, and then I quit. I did not go back.

In all that time I had occasion to see all the other
2196 operators in the various departments in which I worked to find out what they were doing in the matter of repairing runs in hose.

When I first went to work for the Kraemer Hosiery Company, I used an ordinary latch needle. I have the needle with me.

The handle of the needle was made from a pen handle. It was put on by Miss Birdie King, another lady in the department. That is not the particular needle I had from the first; I used the same kind of a needle, but not that one. I gave the first one to a girl. When I went there I got the first needle from Cal Hartzell, Mr. Calvin Hartzell.

(The needle was offered in evidence as Plaintiff's Exhibit 38.)

I have had that needle from that time down to the present time. That was the only kind of needle I used throughout the time I worked in the Kraemer Hosiery Company mills. A latched needle is all I used.

In using this needle, I would put the stocking over my hand, and I would pick it up this way. I would put the run over the first finger and over the stocking, this way, and then pick up the run. I would just hold the needle this way and then work 2198
it this way. I can give an exhibition; I can show how I held it when I was working in the mill. I bent this needle in my purse. I have another one in my purse which is not bent. I got this needle from Mr. Hartzell when I was working at the mill; that was five years ago, 1926. He gave me a needle whenever I needed one. If I used up a needle, I would ask him for one and he would give me another one. He would give me a needle whenever I needed one. If I needed one, all I had to do was to send over and Cal would give it to me. Those are the only needles I have with me; he never gave me any other ones for my own use. He gave those 2199
two needles to me personally. He gave one of these to me when I first went there and he gave me the other one later on, after I had been there some time. That is the only kind of needle I ever got from him. We did try another needle, just an ordinary hook needle, but the girls could not use it. He gave me some of those needles, and I tried to use them, but I was not able to keep them because the girls could not use them. They would not do the work fast enough for us to be able to use them. That was a needle with just a hook. It did not

have anything else on it but just a hook. The girls could not use it.

I could not tell how many needles like this latch needle we had while I was in the Kraemer Hosiery Company's employ. I don't know. I could not tell you how many of the same kind; we have had so many. I never used anything but this kind. I do not know how many of them we had there in the mill. Those needles would wear out from time to time as we used them; that was the reason for getting new ones. We would have to get new ones
2201 when the old ones wore out. When I wanted a new needle, Cal Hartzell was the one I would get it from. I would send work or phone that I needed one and have him fix up as many as I needed at that time. I would then send over for it. Sometimes I would go over and fetch them.

When I was doing the packing and finishing, getting out the orders for the company, I also did repairing and mending; the girls that were with me also did repairing. They used the same kind of needles. I saw them working in the department; they were under me. They did the same kind of work I did. They put it in this way and then put it over this way, over the hand. Then, they would
2202 work up kind of flat like, like I am doing it here. They would turn the hole over that way and work up this way. They would work over the finger. That is the only thing we had to work with, at that time.

When I was forelady over the twenty-two girls, doing repair work, I taught the girls repairing hosiery, in the other departments. I also taught the girls under me how to work. I taught them all mostly that were around there. That was my business.

I observed the method that they used in the actual repairing of the hosiery. I had to watch them. That was my business as forelady. They did it the same way that I did. They fixed up the holes in the hosiery and the runs in the hosiery just the same way I did. They used the same manner that I did. I would take it over my fingers and take this needle and catch it this way and then work it right on out. The other girls did it just the same way that I did, They would put it over their hand and do it the same way; the same way I did in the beginning, using the same kind of needles.

From 1916 to 1923 I went over to the shipping department. I had fifteen girls in the shipping department. We would have to do some mending there in the shipping department and we did it there in the same way. I observed the girls in the shipping department mending hosiery. I used the same kind of needle while I was mending hosiery in the shipping department; the girls under me in the shipping department used the same kind of needle when they were mending the hosiery. They worked over the finger. Some of them have worked over glasses and things of that sort. Never anything but the fingers from 1916 to 1923. I meant, after that. No one ever showed me how to work over an egg cup or anything of that sort from 1916 to 1923.

In 1923, after I came back from being sick, I was a mender and had charge of the mending department of the raw silk, or gray department; I had nineteen girls under my charge there. I was doing some mending then. I had occasion to observe how the girls in that department were doing the mending, and what they were using and whether they were pulling the hosiery over their hands, and working with it.

2206 In the raw silk department, we used the same kind of needles, except that we had two special $50. needles, but only two girls used them in that department. They got those $50. needles in 1928; that is my best recollection. Other than those $50. needles, the girls in that department used the same kind of needles we had used before; the needles we had been using all along up to that time. The work was done over the finger.

I saw a demonstration of hosiery repair in the town of Easton. It was in William Laubach & 2207 Sons' store in Easton, Pennsylvania. I saw it on Saturday afternoon. The girl that was showing how the work was done was in the window of Laubach's store.

She had the hosiery over a cup. She had a needle that was going to pick up the thread, going up and down. She just used it up and down, like that. I did not stand very long to look at it. I just seen what she was doing, and she was working over a cup and she just went up and down like this. She showed the cup to us after that, that it was a cup. It was a white cup, an egg cup.

I never saw an egg cup in the mills of the Kraemer Hosiery Company used in those mills for 2208 repairing hosiery until after I saw the demonstration in Laubach's store in Easton, Pennsylvania. I saw one there sometime after that. When they brought the $50. needle in, why then we had an egg cup with it.

In connection with my work in the mill, I had occasion to go to the other departments, four or sometimes as many as eight times a day. I saw how the girls were mending hosiery in the other departments. They were using a latch needle just the same as I was using. They were working right

over the hand. I always got my needle from Mr. Hartzell.

I know Mrs. Rohrbach. I have know her for ten years. I knew her by working in the Kraemer Hosiery Company mills. I occasionally observed her work in repairing runs in hosiery. I used to work with her. When she was getting back in her work, I would help her. She would ask me to help her out. When she would do that, I would help her out. I would help her out any time she got behind in her work. I was glad to do it. I looked at her work. She was using a latch needle, the same as 2210
this. She mended the hosiery over her fingers. I never did see her at the mill, mending hosiery over an egg cup, never. I saw her pretty close, off and on, up until I left in January, 1929. I was not working with her regularly up until that time, but I would help her out every time she got behind.

I had occasion to see her in the building where she was. She was put over in another building from the one in which I was. I saw her, however, from time to time over there, when I would go over there. She worked with Cal Hartzell, in the same office.

Q194. In all the time that you worked in this mill, in the departments in which you still were 2211
working, or over which you were the forelady, and in all the various departments of the mill which you visited in that time, prior to the time you saw the demonstration in Easton, Pennsylvania, in the department store, did you ever see anybody working and repairing hosiery and mending runs in hose over an egg cup, or a glass, or a jar, or any similar kind of an instrument? A. I saw them with a glass, an egg cup after the Easton demonstration.

I never did see it before the demonstration. I saw it after it. I never did see anything like this

2212 *Anna Kolbe. Called in Rebuttal. Direct.*

(Defendants' Exhibit U-59). I never did see a needle like that all the time I was working in the mill. I never saw a needle that looked like this; it did not have this on it. It did not have this here on it. This here is different from the needle we used in the mill; I have been showing you this.

This thing right here; I don't know the name of it. This opening there.

I mean by this, that extra piece that is on there was not on my needle, this extra piece here, along the side there; that was not on my needle; what I
2213 showed you before. The difference is this piece here. I mean one has a single piece there, and one has a double piece. I never saw this particular type of needle which has been shown to me, before. I never saw one of these needles before I sat down in this witness chair, in my life, that I remember of. I never saw Defendants' Exhibit U-59 before.

(The other needle was offered in evidence as Plaintiff's Exhibit 39.)

I never saw a needle with a double piece of metal stuck in the handle like that.

I got this extra needle by phoning over to Cal and
2214 telling him what I wanted. He would then have the boys get it ready for me. When the boys made it up, after he told them about making it up, then I would send over or go over to fetch it. He never furnished me with a needle like the one just showed me.

I never saw Mrs. Rohrbach work with a needle of this type, Exhibit U-59. I never saw Jennie Rohrbach work over a glass or cup.

To get another latch needle, why, Cal sent them over whenever we needed them for the girls.

I still sometimes mend my own hosiery. I use the needle I have here. I could replace that one with some other one.

I never saw anybody in the Kraemer Hosiery Company repairing hosiery using that kind of needle with the two pieces on the handle.

I could tell that this kind of needle was used because I looked at it. I could tell if they showed it to me. That was the only kind they used. If they were using the needle fast I could not tell. It would have to be still.

When I was forelady, I got the needles for the girls. I supplied them with the needles. I never supplied them with any needles with two pieces. I never did at any time. 2216

I got all of these needles from Calvin Hartzell. The source of supply of the needles that I gave to my repairers that came through me was from Cal. All the needles that I got from Hartzell were the simple latch needle, without the guard on it. Just one piece of metal; without this piece here; and simply with a hook at the end and without this guard on the latch. That is the kind he gave me and that is the kind I gave them.

That is the only kind he ever gave me to furnish to them, except the ones without the latch. 2217

We did not have to buy the needles we got from Mr. Hartzell; they were given to us; I never paid him for any of them. I never bought any needles; he furnished these girls with the needles to use in mending the hosiery.

Sometimes Jennie Rohrbach would get the plain needles if Hartzell was not there, and I would put the handles on them and give them to the girls. We did not have to do that very often. I would get them from Mrs. Rohrbach in such a case.

2218 *Anna Kolbe. Called in Rebuttal. Direct.*

I worked with her, off and on, until I left. I never saw her working with any needles except the ones I have shown here. I sat beside her while she was working, and she always worked with the same kind of needle. She came and talked to me then. She did not help me out in repairing; Bertie King did.

Mrs. Rohrbach sometimes worked side by side with me in repairing. I went into the same room with her and helped her out.

I never saw her work with anything except this
2219 plain latch needle I have shown here. I never saw her work over an egg cup or glass, or jar or anything like that; not anything except over her finger.

When I was laid off for four days after being there so long, I just left. I went into another silk mill. That was after I was at home for a year. After I left the Kraemer Hosiery Company, I went to the new company. I left the Kraemer Hosiery Company because I was laid off for four days. I was laid off by Miss Early. She laid me off for four days and I didn't go back after the four days. She laid me off, she said, because there was not enough work. That was in 1929. That was about the time there was a strike in the mill.

2220 That was not at the time I was off twenty-two weeks on account of my knee-cap. This was the time she told me to go home for four days. When I had my knee-cap injured and went home, they did not pay me anything for it. I injured myself in the shop. I didn't get any compensation from the mill.

Dr. Pohle said that I had rheumatism, and Dr. Beck that I had bruised my knee-cap and that I could not work. He said that was the reason that I was falling down so much around the mill, on account of my bruised knee-cap. Dr. Pohle said it

was because of rheumatism I was falling down and he did not seem to want me to work there any more.

I went back after twenty-two weeks off. It was during the strike when I left. That was for four days. That was the strike I referred to before. The strike was general, all through Nazareth; they all went out on that strike. I didn't go out on strike myself; I was laid off four days and I just stayed out then.

After I came back from having my knee-cap treated, I was promoted upstairs to take charge of the raw. In the last six years I continued as fore- 2222
lady all that time. March 3rd I was put down. I was fooling with one of the girls and Mr. Schmidt called me over and told me that things were going to be changed. He told me that I could have anything in the place but not forelady. I asked to be made a mender, if I could not be forelady. I went to work there as a mender.

There was a reduction in pay; from $3.75 to $3.50. After I was laid off I decided not to go back. I was off then after that, from March 3rd to November 18th. That was after I was put down.

I went into the new mill in December. That is the Elm mill; the firm that owns it is in Paterson, New Jersey. The name of it is the Elm Mill; that 2223
is what they call that particular mill, I think. I have had my new position since December 10th. I know the name of the Superintendent. The mill is in Bath, Pennsylvania. It is six or seven miles from Nazareth. I go over there every day. We go over in the bus. I continue to live in Nazareth. We go to the place I am working now, every day in the bus.

2224 *Anna Kolbe. Called in Rebuttal. Cross.*

CROSS EXAMINATION BY MR. WOOSTER:

Mr. Wooster: I have not objected to the large amount of leading direct examination which Mr. Gilligan conducted with this witness, but I think that goes to the credibility of the testimony.

The Court: Oh, yes, it always does.

The way I came in the case and happened to come here was that Mr. Dickson came to my home on Friday afternoon. He asked me whether I worked in
2225 the Kraemer Hosiery Company mills. I told him yes I worked there twenty-two years. I did not know him previously. I never saw him before, in my life. I never saw him before at all until that Friday afternoon. He brought a man with him; that was Mr. Morgan, Johnny Morgan. I know him. He was somebody I knew before. He is from Nazareth. I have known him for ten years. Mr. Morgan brought Mr. Dickson and I talked to him for five minutes.

Mr. Dickson told me he would call me up on Saturday afternoon if I am supposed to testify here. He did call me up and told me and I came.

2226 He did not tell me what he wanted me to testify to. He did not ask me to look up any records; and I did not look up any records. Everything I have said here is from memory. I remember clearly when I started to work for the Kraemer Hosiery Company and when I got each successive position, certainly. I remember clearly when I started with the Kraemer Hosiery Company, and the year and month I got each successive promotion. I remember all that in my head. I did not get so many but what I could remember them.

I remember it, although I was there from 1908, I started. From 1908, I was there for two years doing general work.

What makes me remember? That is to be remembered. When you work so long for one place, you can remember those things.

I knew Mr. Hartzell before I ever started to work for the mill.

He started to work in the mill before I did. He worked for Mr. Wunderlick before. They both worked in the Kraemer mill. I remember Mr. Hartzell since I am in Nazareth, thirty-two years. His 2228
position there was right what he is doing now, taken charge. Since I have been working there, he has been over the whole plant, in charge over the whole place there. He was a responsible man; we got to ask him for the work. Since he has been there, he has had something to do with who is taken on for employment and who is let off. I would call him a responsible man. He has been a responsible man about as long as I have been there, maybe longer. He has been the confident of Messrs. Schmidt. Mr. Kraemer was in it before the Schmidts. Several members of the Schmidt family have operated these mills. I don't know whether Mr. Hartzell is well thought of by them, or not. 2229

He has only the new part of the mills today. He had to look over the machines and keep them going. He does not have the menders any more. He had the menders up until February, 1929, and it was taken off him then. He was some kind of Superintendent since 1908, but that has been taken off him, and he has only had the new part in February, 1929. He was taken away from the old work. He is now in the new part. He was in charge of the menders before 1929, since 1908, since I was there. He is over in the new part now handling knitters

and toppers. When I say that, I mean up until the time I left there; of course, I do not know what he is doing today.

Mr. Wooster: I will have to ask your Honor's indulgence for a moment. I have a message from Washington from the Commissioner, stating that the Commissioner will not send anybody to New York with the bound volume, but will appoint my Washington man a special deputy. He will not be able to identify the volume as to its connection with the
2231 Patent Office, of course. I do not know what we will do about this, unless the other side will stipulate that it is the bound volume in question. The book can be brought here and shown to the Judge, the special deputy can bring it back up here, and then take it down again to Washington. If you want the Librarian to come up, or any other official, from the Patent Office, an order must be obtained, and a written order from the Court.

Now, your Honor, I would like to know just what we shall do in this matter.

The Court: I have issued orders from time
2232 to time about records and things being sent from Washington; of course, you cannot subpoena anything from that distance, and of course we want to see that with our eyes. Can't you agree? Won't it be marked that it came from the Patent Office Library, and cannot a man get it from the Library?

Mr. Hodges: When it comes, your Honor, I think we will be perfectly willing to stipulate.

The Court: Do you know Mr. Wooster's associate in Washington?

Mr. Wooster: Mr. Coe can be appointed special deputy, I think Mr. Hodges knows him.

Mr. Hodges: I talked to him over the phone, but I do not just know who Mr. Coe is, but I have no objection, as far as that is concerned.

The Court: Could he not go to the Patent Office and testify, of his own knowledge, that he received this from the Commissioner of Patents, or Deputy Commissioner of Patents and brought it up here? I think that should be sufficient.

Mr. Hodges: I think that is all right, and we could reserve the right to look at it before we stipulate? 2234

The Court: All right.

Mr. Wooster: I will have Conway P. Coe, National Press Building, Washington, D. C., a duly registered attorney in the patent office and member of the bar of the courts of the District of Columbia, and the Supreme Court of the United States appointed special deputy by the Commissioner of Patents to bring back this book; the book to be brought is the bound volume, containing the printed copy of the Pogson specifications, as received by the Patent Office, and from which Defendant's Exhibit J-48 was made by photostat. 2235

The Court: There probably must be some stamp on it to show when it was received.

Mr. Wooster: Here is the stamp (indicating).

Mr. Hodges: Do you know whether that was done from the Examiner's copy or the bound volume?

Mr. Wooster: The bound book.

Mr. Hodges: In this connection, your Honor, last night I explained that I telephoned to my

2236 *Anna Kolbe. Called in Rebuttal. Cross.*

son to see if a special messenger could be sent up from the Patent Office with the original drawings.

Mr. Wooster: Of what, the Pogson application?

Mr. Hodges: Of Pogson's U. S. application. My son is here and he can explain what happened. I have what he brought up here by airplane this afternoon, and he turns this over to me. This is not the original drawing that he has here, but he will explain why he could
2237 not get the original drawing.

The Court: What is the original drawing?

Mr. Hodges: The original drawing is the bristol board sheet, about the size of that (indicating).

The Court: You mean the original drawing on Pogson's application of the American patent?

Mr. Hodges: Yes, they never go out of the Patent Office.

The Court: I should not think they do. However, what do Judges do if they want to look at some of those things?

Mr. Hodges: I don't know, your Honor, but
2238 you can realize that they could not send things broadcast from the patent office. It is a secret thing anyhow, but I got access to it, because I got a letter from Mr. Pogson himself authorizing me to have access to that application.

The Court: It was not a publication at all. This other thing you are talking about was a publication, Mr. Wooster?

Mr. Morris: That has been our contention right along.

The Court: I do not see what it has to do with it anyhow.

Mr. Hodges: That is just the showing of that Figure 6. It is a duplicate—supposed to be a duplicate of the prior patent.

The Court: What it amounts to, is that you have secured access by way of rebuttal to something that explains a confusion in these other papers, is that the idea?

Mr. Hodges: It was a vague thing always, your Honor. The clearest thing I have ever seen and the only clear thing was what they offered yesterday. I had never seen the certified copy. It is very different, as you see yourself, from the printed copy. We had, I suppose, a dozen different copies from the Patent Office. They are not certified to, but they are copies made when they are reprinted or repurchased. 2240

The Court: This marked, Third Edition, whatever that may be. It may possibly be when they first make one of those plates, they are not made out of very expensive material. They print clearly at first, but after they have printed a number of them, they are blurred. That is just my guess, I don't know.

Mr. Hodges: Your Honor, a third edition has not been published. 2241

The Court: The best thing is to see the thing in the Patent Office.

I never saw a needle with a hook and a pivoted latch and a secondary side piece like Defendants' Exhibit U-59 until today. I am very sure I never saw a needle with the side guard like that in the Kraemer plant at any time. I am positive. I am not an expert on needles, but I know what I got from Cal Hartzell. Those are the only kind I ever got, and Mr. Wunderle also gave me those needles;

they were coarser. Certainly I looked at them very carefully; when you handed that to me, I saw the side piece on that, but I never saw a needle with any side piece on it, like this, until today. I do not know how to work that needle. I don't know what the guard is for. I only taught with those needles with the latch on.

When I hired the girls for working I went for the needles for them, and when the needles were poor, I got another in the place of them. I was the only one that got needles from Mr. Hartzell for the
2243 girls that I took care of. Mrs. Rohrbach has to give work to the boys. She gave me a needle when Cal was not there.

I do not know anything about a needle here which Mrs. Rohrbach says Mr. Hartzell gave her.

I am on good terms with Mrs. Rohrbach. She is a personal friend of mine. I have been a personal friend of hers right along.

I do not know whether Mr. Hartzell gave her a needle with the side guard on or not. I know she uses the same needle that I use, because she always used to sit beside me.

XQ390. That was not the question. I asked you if Mrs. Rohrbach says here that Mr. Hartzell gave
2244 her a needle with the side guard on, would you believe Mrs. Rohrbach or wouldn't you believe her? I do not know what to say about that, because he gave me always the needles, the way I showed you there.

I don't know everything that he gave Mrs. Rohrbach; I don't know everything because I wasn't there but half the time I used to go through there.

XQ392. Then why can you not say that if Mrs. Rohrbach says he did give her a certain needle, whether you would believe her or not? A. I know

she had the same needle as I have there. She never had a different needle.

XQ393. As far as you think? A. As far as I think. I know; I sat with her.

XQ394. As far as you saw? A. Yes, sir.

I worked side by side with Mrs. Rohrbach, I think, in 1926, not steady side by side, but for a few hours. Then I went to attend to my business to my employees. I worked with Mrs. Rohrbach a little over a year in that building. Before 1925 she was mending. I was in the mending department, another department, but I used to come up to see her; I used to pass there; I stopped in to see the 2246
girls. I stopped to see Mrs. Rohrbach because we always spoke; that was 1926 and years before that; 1920. Not before that, because she started to work there in 1920. I don't remember the month.

XQ410. Then from 1920 on, you saw Mrs. Rohrbach, as you went in and out, and then from 1926 on, you worked side by side with her? A. Well, you know, we would go back and forth in the buildings; that is how we would come together.

When she came there in 1920, she was in the first building too, where we were first put. I was in the same building, not the same floor, up above, the third floor. Her work was mending and giving the 2247
boys work. Cal Hartzell gave her that work.

I started to work side by side with her in 1926; she was with me in the new building, when we went into the new building. I did not go on strike, November 4th, 1929. November 18th, I left the mill but the strike had been going on since November 4th.

I have no feeling against the mill. I heard the testimony of Mr. Dickson today. I came to town from Nazareth, yesterday. I was not listening to this case yesterday.

2248 Besides talking to Mr. Dickson about this case, Mr. Gilligan came to my room last evening to ask me how long I worked at Kraemer's, and what my position was, and I told him.

He did not show me any testimony given by Mr. Hartzell and Mrs. Rohrbach in this case. He did not say anything about their testimony. He did not say they had given any testimony. He did not mention either of them. He did not mention that needle with the guard; he just asked me what needle I was using and I showed him the needles
2249 I had been using. I brought that myself; I brought that along myself. Mr. Dickson did not tell me to. Mr. Dickson did not ask me to come down here and bring my needle. He told me to come down here, and I thought I would take my needles along because something might turn up. He told me this case was about mending. And I thought I might have to give an exhibition or something. I brought my needles with me, but he told me about the runners of the stockings. Well, I thought something might turn up, so I better bring my needles with me.

I did not know when I came here today that Mr. Hartzell and Mrs. Rohrbach had testified here. I
2250 am on good terms with Mr. Hartzell. I never had any words with him. He speaks to me when he sees me.

We did not have any conversation about coming back. He knew when I left. When I left the Kraemer employ, Mr. Hartzell and I were on good terms and always had been.

I have relied on what he told me. And he has kept his promises to me. He didn't make any promises to me.

When he told me something would happen in the mill and I would get a raise, I did not get it. He

said to go to Mr. Schmidt, and when I went to Mr. Schmidt, he said go to Cal Hartzell.

Mr. Hartzell did have something to do with changing my job from time to time; he did from the beginning; Mr. Hartzell gave me in charge of the pairers.

He did not put me down from forelady to mender.

When I left the place, Mr. Hartzell did not lay me off; he had nothing to say to me then. He didn't have anything to do with that. When I finally left the Kraemer mills, Hartzell did not discharge me or lay me off. Mrs. Adelman did; she 2252
is a forelady over there.

In the Kraemer mills, as it was organized, while I was doing my work over there, the gray department was kept separate from the other departments. Mending was done there separately from that in the finishing department. It has been six years that I have been working there, till March 3rd, 1929, I was in that position. I started working in the gray department in 1916 and I was there seven years. Then I was laid up with my kneecap and I was home for twenty-two weeks; then I was put in the gray department; that is the only time I had any work in the gray department. My first
work in the gray department was mending for a 2253
few days, then I took charge of the menders, and putting the goods in the dye house. Then I was quite busy with things other than mending. In the gray department, after the menders are finished the goods go to the dye house. They don't go to the other departments until they come from the dye house.

I never put stockings on forms and examined them. I had charge of repairing in the finishing department for six years: from 1910 to 1916.

We only got three buildings there. In building No. 3, we have only one floor there. We have the knitters and toppers in that building. I was a forelady for twenty-two years, but not in that building. I have had the work of pulling ends of the stocking; that was done in the raw, before the stockings were dyed. I had charge of that; it comes to the menders, and I had charge of that. They have the same people who pull ends of stockings and also make mends. I was also a kind of examiner on gray goods and then I did mending
2255 also; I helped in between, all around there. The other girls that I mentioned were all mending. I had to go and look over my orders and things and take charge of most everything around there.

I did not take notice of the $50. needle. When I was there I was not on good terms with the forelady and I didn't want her to see that I was going around with her girls. The girls told me they were working on the $50. needles. I do not remember anything they said about the $50. needle; I was not on very good terms with her. I don't remember anything being said about magnetism in the $50. needle.

I never saw this needle, Exhibit U-59. I cannot
2256 say that a needle like Exhibit U-59, was never used in the Kraemer mill, but I never saw this needle or a needle that looked like this—all I saw is the one I showed here.

They are both there; those are the only kinds I used (Referring to her own).

I never saw needles like that with the guard as produced by Mrs. Rohrbach. There is a difference here (indicating), between those two needles. There is something in between there too. This (X-62) is more finer than this one (Exhibit U-59).

With the needle I produced, I worked on 39 gauge, 45 gauge, 48 gauge, in the raw silk and in finished silk. We did mercerized years ago, in 1910. I could not tell you whether it was 48 gauge; it was mercerized goods we made. I don't remember if it was flat or circular in fibre.

I don't remember getting in any special machines to knit this mercerized 48 gauge in 1910. They had the machines in, that Mr. Kraemer had put in. Mr. Hartzell was there at the time. He had something to do with starting the 48 gauge mercerized.

Defendants' Exhibit T-58 is childrens. I cannot 2258
recall this. They are misses—ladies. I can recognize that as mercerized goods. I have been away from that so long I cannot recall the gauge. I cannot recall all those gauges. I can recognize the handwriting on these tags. It is Cal Hartzell's. I know what the symbols 70/2 L 350 mean. That is the number of the stockings. The markings on the other pieces such as 70/2 L 320 is the number she gave to the stocking. I recognize 60/2. This is Cal Hartzell's writing; these are his, Cal Hartzell's writing.

I cannot tell just when this kind of mercerized goods, such as Defendants' Exhibit T-58, was first 2259
made in the mill. I believe it was later than 1910; maybe about 1916 or 1917, probably around there or 1920, I cannot recall that style any more.

The handwriting in the last five pages and on the inside of the back cover of Defendants' Exhibit V-60, looks like Mr. Hartzell's writing. I cannot recognize the drawing on the last page.

I think I know Anna Rissmiller, still I cannot recall her. I heard that name. You know that is years ago. I do not know half of these girls; I cannot recall some that worked for me; I cannot

recall some of the girls there now. I don't know whether she is dead or alive.

The size of Nazareth is 6000. The people that work in the mills come from the neighboring towns. Bangor is some distance from Nazareth. Bath is six miles from Nazareth; Easton is about seven.

FRANK W. DAHN, called as a witness on behalf of the plaintiff, in rebuttal, having been duly sworn,
2261 testified as follows:

DIRECT EXAMINATION BY MR. HODGES:

Q1. Mr. Dahn, will you state your full name, age, residence and occupation? A. Frank W. Dahn; age 52; residence, Chevy Chase, Maryland; occupation, patent lawyer.

Q2. Have you testified in interference suits? A. I have, in various places, in various cases in this country and Canada.

Mr. Wooster: We will concede, in order to get along, that Mr. Dahn is a qualified patent
2262 expert and he has testified for plaintiff in the Finch and the Gearhart suits, on this patent, and that he has worked in the textile division of the Patent Office as principal examiner.

The Witness: I also testified in Canada for the Hemphill Company, Pawtucket, Rhode Island, and in the Western District of Pennsylvania in the case of *Engle* vs. *Landis;* I have taken part in a lot of things that did not come to trial, interference suits, and so on.

The Court: They have already conceded your expertness, so it is not necessary to go into all of this.

THE WITNESS (Continuing):

I have been employed in the Patent Office from 1907 to 1920; the first five and a half years in the Division having to do with mechanical matters in machine elements; the last seven and a half years, approximately, in the Textile Division. In that Division, I had charge, during the early years, of various classes, such as winding and spinning, felting and other possible minor classes. 2264

In the last three and a half years, approximately, I examined the classes of knitting, having full charge of that class, subject to the supervision of the primary examiner.

In the spring of 1920, I was made primary or principal examiner, and assigned to duty in the law division of the patent office.

Shortly thereafter I resigned from the Patent Office and entered private practice, first, in the office of a patent lawyer in Washington and later for myself. In my practice, I have specialized in the class of knitting; I have had charge for the past ten 2265 years exclusively of the patent work of one of the large manufacturers of seamless machines, and have done a lot of work on the straight machines preparing applications, prosecuting interferences, assisting in various business arrangements, and so forth. Probably between one-third and half of my business is directly connected with this art.

I am a member of the bar of the Supreme Court in the Court of Appeals of the District of Columbia, the Supreme Court of the United States, a member

2266 *Frank W. Dahn. Called in Rebuttal. Direct.*

of the American Patent Law Association, and have degrees of Bachelor of Science, Bachelor of Law and Master of Patent Law.

BY THE COURT:

Q3. Master of Patent Law, is that a degree? A. That is a special course in—

Q4. Granted by Washington University? A. Yes, sir, that is under the charge of—

2267 The Court: I never heard of it before. I am interested in educational things; I never heard of that, but you need not waste any time on it.

The Witness: And it is given in two or three schools in the District of Columbia.

BY MR. HODGES:

Q5. You have listened in at the testimony in the present case? A. I have.

Q6. And you are familiar with the patent in suit? A. I am.

Q7. Now, I call your attention to several of the statements, and in order to save multiplying ques-
2268 tions and to shorten the examination, I will ask you to briefly run over the statements on page 1 of the patent, in which reference is made to what the inventor apparently knew of the prior art and what he was distinguishing as his own therefrom. A. Well, it appears from the statements on page 1, that the inventor was conversant with the prior art method known to us as the French or finger method, in which the work of repairing was done over the finger. That has been known to me in one form or another to be an ancient process. My recollection is of having seen it thirty-five years ago, done

not with a knitting needle, not with a latched needle, but with a crochet hook,—an ordinary crochet hook, by girls over their fingers.

BY THE COURT:

Q8. Mending runs in stockings? A. Yes, mending runs in stockings.

Q9. Or sweaters? A. Stockings, as I recall.

That process as used, I should say either with a a crochet hook or with a latched knitting needle, he appears to have been familiar with and to have made frequent references to in the first page of 2270
the specification, and that is what I assume that he intends to distinguish over, as to his invention.

It is known to me that his attorney was familiar with the Pogson patent referred to in this suit by reason of the DeMarr application, which has only recently come to my attention, and in which the Pogson patent is cited, and I have assumed that is what he was distinguishing from in the first page of the specification, rightly or wrongly.

BY THE COURT:

Q10. He was stepping ahead from DeMarr, was 2271
he? A. So I understand, yes, sir.

Q11. How far did he go? What was it that he claimed as his own, is that the other part of the question? A. It is clear in my mind what he undertook to claim as his own was the method which has been referred to by us as the pumping method.

The first time I heard that term was in connection with the Finch suit in Washington, and it seemed to me a peculiarly apt term to describe a piston movement, because I have always thought of a pump as being a thing that moves up and down

with a plunger, having had a painful experience with pumps many years ago.

Q11. Not with very early pumps, you would not have referred to that as a pumping motion—but go on. A. (Continuing.) I have seen this method, which I have assumed, as Mr. Stephens' invention operated by him a couple of years back.

My first experience with that was in connection with the knitting arts exhibition, what we call the Hosiery Show at Philadelphia about 1928. I attend that every year, as a matter of keeping up with
2273 developments in this art, and usually spend a couple of days there to look into things fairly thoroughly. There I saw a booth with some girls in it, possibly only one, I don't remember exactly, working over a cup, probably an egg cup, although I don't remember that detail, and working the needle up and down with amazing speed.

Q12. About when was this? A. 1927, as I recall. I am frank to say that the thing that particularly called my attention was the amazing stories about the prices that the Stelos people were getting as leased prices for those needles, and I noticed the crowds around this booth, because they were very noticeable, and I noticed the speed with which they
2274 worked, and I noticed the way the process was done. That is, they reciprocated with great speed through the fabric. I also noticed a thing that is referred to here in line 70, and so on, namely, that the girls did not need to watch the work carefully, as I was well aware that they did have to watch carefully in working over the fingers. In this case, they looked around.

A. (Continuing) I meant that is an illustration of what I thought was new, this thing of working through the fabric, working over a holder and this

reciprocating motion that I saw there, as distinguished from working over the finger, that I was familiar with.

The Court: That was the new thing claimed?

By Mr. Hodges:

Q13. By working through the fabric, do you mean crossing the plane of the fabric? A. Certainly, I think that is the meaning of the word, crossing through the plane of the fabric.

Q14. Were you sufficiently near when you first saw this at the Philadelphia exhibit, to see what each hand was doing of the operator? A. Oh, yes. 2276

The Witness: (Continuing.) I was within a foot or a foot and half from the operator. This was just a small booth, containing possibly a chair, maybe two or three—I don't remember how many girls there were, and there was a low railing about it, so that one could get very close, and pay close attention to what was going on.

By Mr. Hodges: 2277

Q15. Did you see this for the first time before you ever testified in one of the Stelos cases? A. Oh, yes. That was in 1927.

Q16. Will you state to the Court and, in doing so, you may refer to the claim in suit as to whether or not the claimed invention is supported by the disclosure in the specification or the descriptive part of the specification, in your opinion, and give any reasons? A. Well, I think the claim is supported by the disclosure, in setting forth the inven-

2278 *Frank W. Dahn. Called in Rebuttal. Direct.*

tion, and it is set forth in the specifications, and drawings, yes.

Q17. Will you state whether or not you consider that there has been any departure from the original disclosure in this patent from what you saw in the method operated in Philadelphia, the first time you were there? A. I do not think there is any evidence of intention to depart from it. There may be some slight—what shall I say?—inefficiency on the part of the draftsman; it might have been better shown; might have been better described—we always learn
2279 as time goes on, but I believe it was his honest intention to show and describe the invention such as was at the Hosiery Show.

Q18. On what do you base that opinion? A. That means in going through all the details of the patent, I should think.

Q19. Will you do so? The other side has done so and I feel we should have your views on the subject in order to enlighten the Court.

BY THE COURT:

Q20. Let me ask you one thing: Do you think, when you saw this demonstration, that the operator
2280 was holding the device laterally out of alignment with the run or raveling until the loop has slid back over the end of the latch—what do you understand by "laterally out of alignment"? A. That is a thing I have never been absolutely sure of. It means either one of two things. It means, for instance, that here is a run, and this is held like you hold a lead pencil, laterally to one side of the vertical plane, passing through that, or else it is intended to distinguish it from the Pogson patent, where the needle is operated substantially in the plane of the fabric. Laterally is not a very good word.

The Court: I do not think it is a very good word either. What does it mean in the present claim, in your opinion?

A. I cannot say what the intention of the draftsman was. It must be one of those two things.

My opinion was, here was the Pogson patent which you could not always tell was working in the plane of the fabric, you were not going through the fabric, although you were going far enough to pick the next thread, then going on over the plane of the fabric, that is what they were distinguishing from, and for that reason that word "laterally," means out of the plane of the fabric, right or wrong. 2282

The Court: That is what has interested me right along; at any rate, it was granted in the Patent Office, was it not? A. Oh, yes.

BY MR. HODGES:

Q21. As I understand, the defense attacks the view that in the interim between the filing of the Stephens application and the incorporation of the claim in suit that the so-called commercial method had evolved and was not described in the body of the specifications? A. Yes, sir. 2283

Q22. Will you not be a little more specific and point out to the Court whether or not you find any support in there as to whether there was a departure from that original disclosure and the first incorporation of the claim in suit? A. Maybe we can make it a little more perfect and perhaps save a little time by being more specific. I will begin at line 87 and compare that with the drawings.

2284 *Frank W. Dahn. Called in Rebuttal. Direct.*

Q23. Yes, I think it would be well to compare it with the drawings. A. As I wish to say that Fig. 4, as I take it, is intended to be on a plane of the fabric. The fabric is lying horizontal and the needle is going through. The fabric is much enlarged for obvious reasons.

Q24. And also stretched? A. And I should say it is under some tension both longitudinally and laterally; in fact all around. It is stretched over something, as set forth in the specifications.

Then the needle has been inserted into *a* loop in
2285 the wale, in the wale that has a run in it.

Looking for a moment at lines 29 to 31 on page 2, these three figures, 4, 5, and 6 a view of the fabric is had, showing the different stitches and the method of handling. I think, therefrom, that the draftsman intentionally turned the needle to the right for a further view of another stage of the operation to show the location and the conformation of parts of the stitches, or the courses, as I would prefer to say.

There it is around the rows of stitches at the particular wale in question. There it shows these various rows of stitches with the needle inserted into that particular wale.

2286 In Fig. 6, practically the same thing happens. It appears entirely likely to me that he just simply laid that nedle down flat on his desk and drew what he saw then because that shows it at the relative location of the yarn *b* and the hook on the yarn *b* are in those two figures.

Coming back to the beginning of this description in line 87, "The operator at first inserts the magnetized hook 1 through the last loop *a* of the ravel or run and beneath the next thread *b*." The term "ravel" or "run" is not particularly good, because

the term of the art is "wale." Perhaps he should have said "wale" instead of the "ravel" or "run," in which the run occurs.

However, he has simply gotten the loop *a* on the shank of the needle just beyond the end of the open latch 4 and between the shank of the needle and the guard 6.

It extends thus to my mind, about at the angle at which you would hold a lead pencil and down through the fabric. It is shown as passing underneath the run *b* which is shown as clearly as it can be in the extended and disconnected condition of the fabric as shown here. It is not possible to show 2288
it so clearly, or to such a great extent in the disjoined condition of the fabric. These loops are very large.

"The needle is then slid forward until the loop *a* slides over the free end of the latch or bridge 4." I should have read that before. That describes just what is shown in Fig. 4. The loop *a* has passed over the end of the latch or bridge 4.

"As the loop *a* is sliding toward the free end of the latch or bridge," which I take to mean the end nearest to the bottom of the page in Fig. 4—"it spreads the free end of the side guard from the needle, and on the forward stroke this guard 2289
spreads the threads and facilitates the stroke." Which means that when that is forced down between the side walls of the run and the cross threads it may be quite small in a close fabric and the guard helps to open the space, because if it is a space between the side walls of sheer fabric, there will be very little space there.

When it stops between the side walls of the run and the cross threads in these new sheer fabrics, there is not very much space. At that time the

guard helps to open the space. Thus it relieves the latch of a certain amount of tension, which may be a desirable thing.

"The needle is then pulled back in a reverse direction"—that is, having now slid the loop *a* over the end of the latch, and having the hook 6 under the run of the ladder it starts to pull back "in a reverse direction." "The loop *a* sliding back against the latch or bridge" as is usual in the case of latch needles "and swinging it against the hook as clearly shown in Fig. 5."

2291 It seems to me to be entirely consistent with this description to assume that the movement is down on an incline about the angle at which you would naturally hold a pen or pencil, downward on that incline and back up on the same incline. That is a movement forward to a little extent away from from your body and a movement back to a limited extent towards your body.

The draftsman, in Fig. 5, then turned his needle to the side so that he could show the rung *b* bent down by the latch 4 and hook enclosed in the space, what you might call the "eye" of the needle between the latch and the various sides of the hook. That shows also the loop *a* on the shank in the
2292 notch at 5, and passing between the shank and the guard 6.

This needle which is temporarily turned aside for the draftsman's purpose, is now moved up, and will form the rung *b* or force the rung *b* into a loop and draw it into the loop *a*. "And the latch in the meantime reaching for and grasping the thread *b* and forcing it into the magnetized hook" where it is as shown in Fig. 5.

Due to the fact that that rung *b* has been shown at the left hand side of the ladder which is the way that it has always happened when I have closely

observed the operation of the Stelos method, that the needle is held in such a way that the latch falls on the rung towards the left-hand end of that rung and bends it down towards the shank of the needle.

In saying all of this I mean when it is done with an ordinary Stelos needle. I have seen it done with other needles having a very long hook and a very short latch and in fact, before ever seeing it to my knowledge, I had imagined that way of doing it so as to have the capacity of going straight out and down in a vertical plane passing through the run when the fabric is laid horizontally as in these figures, as assumed in these figures. 2294

BY THE COURT:

Q. Is not your best bet, to use the vernacular, in the use through the fabric, really to be found in the second paragraph in the specification, line 10, on, which says "This objection is obviated in the present invention by stretching the fabric over a porcelain dish, allowing sufficient depth for the free use of the needle"? What does that mean if it does not mean that the needle must per force have room to go below the surface of the fabric? I can not see that from any ordinary analysis that it could mean other than that. Is not that the common sense interpretation of it? A. That sounds like a common sense view of it to me. That is my opinion. 2295

Q. I do not see that it could have been expressed there for any other purpose. I do not see how we could really read the thing as a matter of common sense and read that thing the way it makes it, a proper view of it, and not say what you are just saying now. I do not see how we could arrive at any conclusion other than that it goes beneath the fabric. The use of the word "depth" and the fact

that the fabric is to be stretched over something to give an empty space below it would seem to indicate that to me. I think that is where you get your three dimensions. It is where you get it off of a flat surface and get it into three dimensions. That is the first time that I see that he gets it into a three dimensional space.

There you begin to depart from the horizontal and step into a tri-dimensional area. Is that not so? I would be glad to have your opinion on that. I am just trying to get this thing straight in my
2297 mind, so I can tell what this thing is. I want to know what was really in their minds at the time this application was drawn. A. Might I explain that in talking about the short latch needle. This was a sort of speculation of mine. I was wondering whether the needle operated in a vertical plane, and whether such a needle would be an infringement. I secured a short latch needle and it seemed to work very well. In fact, it worked in a vertical plane right along with the short latch. I was curious to know whether that would constitute an infringement or not.

Q28. I have had that same thought in mind all
2298 along during the case. If the length of the latch were shorter in proportion to the side of the ladder, if you had a latch it would not be so likely to slide around, would it? A. I got my needle from Mr. Stephens. In fact, I was somewhat surprised to get my needle from Mr. Stephens with a short latch. I did not know at that time where he got that needle from. I know where he got it from, now.

That needle worked all right. It did not strike the run over here and force the run down. He was working it this way in the rung and had the hook

going up and down this way, and it worked very well. It worked vertically all right.

Q29. Don't let me interrupt you too much. Every now and then something occurs to me. If I don't get an answer to it at that time, it will bother me later on when I am off to myself to study the case. That is why I ask you about that. A. There is an explanation here that does not mean a great deal to me, about the purpose of having the hook and the latch laterally, point laterally. In the needles I am familiar with, that has not been a feature. I do not think that it is important now. 2300

Passing down to line 112: "The operator now continues to pull the thread *b* which is held tight by the closing of the latch or bridge 4, against the hook, until a loop *c* is formed"—I take that to mean that the upward and downward movement continues until the rung *b* is formed into a loop and drawn through loop *a* to form loop *c*; —"• • • until a loop *c* is formed in the thread *b* and it is drawn through the loop *a* as clearly illustrated in Fig. 6." That completes the motion of the loop, and then you come down again to a position such as that in Fig. 5.

The magnetism of the latch and needle is opening the latch a little ways and the latch being opened 2301 the rest of the way by the pressure of the loop *c* sliding back over the back side of the rear end thence over the hook and so on back over the shank of the needle.

Q30. Was the Finch patent ever in interference or citation of the plaintiff's needle, was it ever brought in as an interference with the plaintiff's needle, or would it be? A. Presumably; I don't know about that.

2302 *Frank W. Dahn. Called in Rebuttal. Direct.*

Q31. That is a course of procedure, is it not? A. Well, that is a course of procedure that depends upon the way the application is made. It depends upon the breadth of the application in the art. He may limit his claim so as not to claim what is shown in a prior patent. That is frequently done in order to avoid an interference.

Q32. It must have been regarded as an equivalent, must it not, and in that case it would have to be an interference, would it not? A. I beg your pardon, that would be a different matter. It would
2303 depend upon the breadth of the claims.

Q33. That would make it different, would it? A. In this way. This Finch sliding latch needle generally was a known needle, such as could be substituted into a knitting machine for a pivoted latch needle, and it would do the work. There are patents in this record that show the use of sliding latch needles on the cylinder of the machine and in the dial of the machine. It will take the place of the pivoted latch needle. It will serve the purpose of the pivoted latch needle in these machines.

BY THE COURT:

2304

Q34. Can you give me any idea on that? A. I will be very glad to try. Whenever a case is filed in the Patent Office, it has some kind of description of invention. It has some kind of claim. Now it depends on the breadth of that claim as to where the interference would come. They all have some kind of a description of the invention claimed.

Q35. Surely. A. What decides whether there is any interference, is the scope of the claims in view of the prior art. If he draws them in narrow enough to suit his purposes, he will avoid any conflict.

You can patent almost anything if you will limit it, or draw in your claims narrow enough in view of the prior patents and the state of the prior art.

Q36. The sliding latch needle is a thing which is regarded as different from the pivoted latch needle, is it not? A. That sliding latch needle has been an element in the knitting art for many years. I have seen that same thing, or substantially the same thing, in patents of many years ago.

In England the pivoted latch needle is commonly known as a self-actor. All you have to do is to feed the yarn to it and it will knit it without any other 2306
mechanical aid.

Q37. That is the pivoted latch needle. A. Yes, sir.

Q38. And they call that a "self actor"? A. Yes, sir. It knits without any help. Prior needles, for instance the spring beard needle, had to have something to close them in order to operate. This was a self actor. Perhaps nobody knows where it was really invented at the beginning. It was supposed to be invented in France. There was an early patent of 1849.

A little later somebody invented a needle with a sliding latch instead of a pivoted latch, but it 2307
operated substantially the same way to get the same result. The mechanism is different, but it knitted by an up and down movement, and that was the whole story. That condition there of a maximum operation without help to make the stitches. I mean by that, that all you had to do was to move it up and down and feed the yarn to it, and it would knit. That is the striking similarity between the pivoted latch needle and the sliding latch needle. They would both operate by simply moving them

up and down and feed the yarn to them, and they would knit.

In contrast to these two needles, we have the other needle, such as the spring beard needle, which required a cam or some other operating mechanism to produce the same results. It was not possible to simply feed the yarn to them and make them knit.

Q39. This man got a patent for this thing, this sliding latch needle? A. It may have been an infringement that existed on the pivoted latch needle
2309 at the time that it was first brought out. It may have been that he limited his claims in order to safeguard his invention. That was all a long time ago. It may have been an infringement on the existing pivoted latch needles. It may have been a king of infringement.

Some of these earlier sliding latch patents alleged great advantages over the pivoted latch, and possibly they had some advantages.

They have never come into extensive use in machines. They are used to some extent.

An equivalent is a thing that does substantially the same thing, in substantially the same way.
2310 These needles knit without other aid. They are the only needles that do do that. In that way they are equivalent.

Q40. The way they arrive at it is certainly different. The operation of the sliding latch needle is quite different. We have this hook and this latch sliding here in this sheath and the length of the movement is controlled by the depth of this slot here in which it has to go backwards and forwards in this way that it is used here (indicating). I am just thinking out loud. It strikes me as if we were doing the thing in a different way, but accomplish-

ing the same result. That is what I have been wondering about. A. Do you mean run repairing or the operation of a knitting machine?

Q41. I was thinking of run repairing. A. All right.

Q42. Suppose you are quite right about the three dimensional aspects of the Stephens patent. Suppose we take what you might say is a rational interpretation, the common sense interpretation of that paragraph that I referred to a moment ago, and say that it means that we run this up and down in this dish and we will connote laterally to have it 2312
mean in three dimensions.

Granting all of that, you have somebody else come along with a needle that operates differently. I do not believe a person who ever saw a sliding latch needle, would ever think of the pivoted latch. We now have a man come along and with another kind of needle which operates in the same three dimensions. This second needle, however, has a different method of doing the same thing. That is what I want to get at, would not the method of this second needle be different? There is no similarity, to my mind, as yet between the operation of these two needles. That is to say, it is something that I 2313
am thinking about now. That is what I want to get at. Why is it that you say that the second needle has not a different method of doing the same thing? Can you answer that? Perhaps there is no answer.

Mr. Hodges: There is an answer, your Honor. That is the very thing that we want this witness to tell you. We want him to explain to you just what that difference is.

Q43. Can you answer that? A. I will try to give you my reaction to that. Here we have a sub-class of patents on needles. Some of them are spring beard needles. There may be some other types of needles that are variations away from that. Now if a person wants to get something else other than the old pivoted latch needle to do this work, he should be able to go all through that sub-class of needles and pick out the needle he wants, make a selection of another needle that can do the same thing that the old pivoted latch needle did. He
2315 would not select a bearded needle, but he would select another self actor. That is what they have selected here. Bearing in mind that while the sliding latch needle is operated by the thread in both directions, so it is in the pivoted latch needle and can be and has been so used with the Stephens method, although he got the best form that he had conceived at the time he applied for the patent, and he had added some other things; for instance, magnetism, in an effort to improve that operation.

Q44. Yes, that was clever. I conceive the magnetism in my mind as being clever. A. He brought that in with the addition of the magnetism which
2316 had a tendency to open the latch a little, although the thread itself moved the latch in both directions, and moves it that way now.

Q45. It is about the same, only it opens it to an angle of about 45 degrees? A. Probably more or less, according to the strength of the magnetism. In some it opens it more; in some it opens it less.

Q46. It is not thrown back. All they want to do is to keep it open just a little? A. Yes, just to throw it open a slight bit is sufficient. In no needle that I have seen does it throw it all the way back. It might be possible.

What I mean to say is that the needle they have referred to in this suit, when you draw the loop up here the latch will fly back. I have handled some of them myself. There it is there now. You can try it and you will see it will go back in this way. Whether that is due to the point of it or not, is evident from this.

When it comes to this point, it will suddenly let up and fly back. It is obvious that the thread moves it in both directions. So it does in the sliding latch needles.

Q47. If there was a spring beard latch needle, 2318
you could readily understand that when you let it go it would throw the latch back itself. A. Theoretically it would work that way. I do not see any reason why they should not use those needles in present day machines. Perhaps there is some other objection. I would not say about it.

Q48. Oh, I can readily see that when you let it go it would throw the latch back fast in a spring beard latch needle. A. Theoretically it would.

Q49. I think that is obvious. A. Yes.

BY MR. HODGES:

Q50. Perhaps if you will look at the claims of 2319
the Finch patent, you can explain to the Court what little details carried it to make it patentable. A. Speaking from memory—

BY THE COURT:

Q51. What are you reading from now? A. The first claim.

Q52. What patent is that? A. That is Patent 1674508. The first claim of that patent.

2320 *Frank W. Dahn. Called in Rebuttal. Direct.*

Q53. On page 3? A. Yes, sir, page 3, line 120. I will just read this to myself. I can go over it quickly and refresh my memory and then I will be able to make a statement on it. (Witness read the document in part.) Now will you read the question to me?

Q54. Perhaps if you will look at the claims of the Finch patent, you can explain to the Court what little details carried it to make it patentable; that was the question. A. As compared with what?

Q55. As compared with the previous latch nee-
2321 dles.

BY THE COURT:

Q56. With previous sliding latch needles? A. All right.

BY MR. HODGES:

Q57. Now can you explain this to his Honor? A. Yes. The claim 1 seems to depend for patentable novelty on the fact of its having an abrupt shoulder on a line substantially equivalent to a right angle, with the direction of the movement of
2322 the latch of the Finch needle.

BY THE COURT:

Q58. There is a hump where the loop comes there and settles down to something that it can not get over with much facility. And then it pushes upon the latch with the exercise of friction, or something or other; is that what it all amounts to? A. Yes, sir, it is mainly this shoulder.

Q59. We have a model of that. A. It is that hump.

Q60. And the downward thrust that pushes it open—on this downward thrust it slips off the angle over the end of the hook and that angle which is apparently an equilateral triangle both ways, on the downward and upward stroke, makes that smooth and prevents it from running up on the handle, or makes it go up in the inner part of the needle here (indicating). A. I think it is the fact of the shoulder being vertical instead of at an angle that makes it patentable. I think that the vertical angle is the main thing. I should say that the sliding latch otherwise is nothing more than a common sliding latch needle, with no particular novelty about it. 2324

Some of these sliding latch needles have very positive action, a positive cam action. There is a cam to move the body of the needle. There is another cam to move the latch. That cam goes up inside, the action of it, and moves the latch up and down at the proper moment. That gives a very positive movement to both the needle and the sliding latch by means of these two cams.

Q61. You can not make it operate, except in that manner, if you want a positive action? A. Yes, it can be operated in other ways. Sometimes they are operated by the action of a spring on the sliding latch in a groove that fits right in the machine. There is something about that vertical shoulder that is the point that carried that claim apparently. It is my opinion that the vertical shoulder carried the claim for the Finch patent. 2325

Q62. Suppose you put the other patent in interference with it. Mr. Stephens' patent here, put his patent in interference with it and wanted to fight it, could he have contended against it? A. The interference in the office are set up either to deter-

mine the question of priority, who was the first inventor, or of seeming interference. He had his patent so there could be no interference.

Q63. If somebody had the patent, you don't grant a new patent that covers the same ground? A. You may grant a patent along similar lines, if you draw the claims down narrow enough to escape the prior patent.

Q64. If you don't look at that patent, your mind is not likely to consider them as the same, is it? In other words, you would have to have it called to
2327 your attention that there was some similarity? It would not show on its face; is that the reason that they did not have this interference? A. Might I suggest that the claims of this application of Finch evidently were drawn by someone who knew something about the art, and they did not draw their claim broad enough to cover the pivoted needle.

Q65. If it is an equivalent needle, why should it not, for that reason, have fallen? That is what I do not understand. If you have two things equivalent to each other, and each of them is patented, and each of them has advantages which are about the same, and each of them is used by operating in a certain method, how can you say that the latter
2328 one is the first method when each of them is used by a separate method, a certain separate method for each of the things, such as each of these needles? Is there not a different method for using the pivoted latch needle from the one used for the sliding latch needle? That is the whole point. There is a vital point there to this case one way or the other. A. If I might attempt to illustrate that thing in this way, I might say that there are over 500 patents on hammers, each one of them used in driving a nail. There are differences of structure, but they can

be used in the ordinary method of nailing. Now these needles. Each one of them is different in structure, but again, each one of them can do the ordinary method of knitting. They can both be used to crochet with, of course. They can perhaps both be used to perform the process shown in this machine for wadding horse hair. They can both be used, I think, in the Merrow sewing machine. They can both be used for performing various processes.

Q66. Nobody can prevent me from driving a nail with any sort of hammer that I want to buy, can they? A. They can not at this time, because those 2330
patents have expired. There may have been a time when the monopoly would have been granted to some one person.

Q67. That has all expired a long time ago? A. Yes, but if you get a patent for some other kind of process, then it belongs to the individual until it has expired. They might stop you from doing it until their process expired.

There might be some new process, then for a time some one has the monopoly on the process, and the way of doing it, and that would naturally be a monopoly with all the benefits going to him. As an illustration, the Morse Telegraph patent was a 2331
monopoly for 17 years on any method of electrical communication, almost.

Q68. I thought that was dissolved. A. One particular claim was dissolved, because it was substantially different, but the real patent stood, and that covered substantially everything. I do not remember just what the thing was that was dissolved, but that was a monopoly that serves to illustrate the point. The patent may cover almost everything for performing the same method; possibly not everything.

2332 *Frank W. Dahn. Called in Rebuttal. Direct.*

Q69. If I want to go from place A to place B, and that is the purpose, my going there, that is my ultimate result. If I go there in one way by horse and runabout, and then if I go by motor car, I will get there quicker by motor car than by the horse and runabout. There are certainly two different modes of going.

You say the sliding latch needle is in some ways different from the other kind of needle. A person who uses the sliding latch needle to cover the same territory, is doing something different. If
2333 you can hit the trigger that will explode the right thought on that in my mind I will be most grateful. If you can hit the trigger that will let loose the explanation, I will certainly be in a better position than I am now. This thing is most difficult to me. A. It is not easy.

Here we have these various instruments. Both of these are adapted to do the things. He has got a new thing to be done. Both of them will do that. It would be perfectly easy for a person who is skilled in the art to do it by either of these instruments, and as an intelligent person he would make the selection of the one he thought most favorable.

Q70. It may be perfectly obvious that he could
2334 do it with the sliding latch needle or with the pivoted latch needle, but if it has been done with the pivoted latch needle and he comes along later and does it with the sliding latch needle, would it not be the inventor of that process? A. If there had been no sliding latch needle known in the art before that. If, on the contrary, there are plenty of patents on the sliding latch needles before Stephens came out with his, it would then be a question of intelligent selection in the known art to get the one best suited.

It does not happen that the sliding latch needle was invented by Finch. It was in the known art for many years prior thereto. Of course, I am taking the side of the Stelos Company on that. It is an argument, but I think it is a sound one.

Q72. Well, it has seemed to me that so much emphasis has been put upon the three dimensional side of the operation of the needle and whether it goes to the plane of the fabric as to lead one to the thought that it might be the turning point of the case. A. Well, it has an important bearing on the case, of course.

2336

BY MR. HODGES:

Q73. What would, carrying that argument further, saying that the method being discovered and perhaps applied in that form for the first time to accomplish this commercial thing, the selection of a means within a certain reasonable range is merely a matter of modifying that method. A. If the means are old and previously known, it is a matter of intelligent selection as to which one you want to use.

BY THE COURT:

2337

Q74. Suppose one of the means is new enough to get a patent on. A. That is immaterial. Here is a different needle from the prior art. There are needles in the prior art which will do these things. He is entitled to improve upon what we have done, all right, but he is not entitled to our method. What he has done is simply a slight improvement—saying that for the sake of argument—but it is not a new invention. In other words, he has simply taken a slightly different method, in fact a method which

2338 *Frank W. Dahn. Called in Rebuttal. Direct.*

is not different at all, but using a slightly different needle operating in exactly the same manner by our method, and to produce the same result. He is not entitled to do that. He is not entitled to our method.

Q75. It is just a thin slice of cake? A. Yes, sir.

Q76. The only way he could use this needle in this art at all would be by succeeding in persuading the Stelos Company that it was a better needle than the one the Stelos Company was using, and make some sort of deal with them whereby their
2339 method could be used with his needle. A. That is exactly the situation that happens so often in so many of the mechanical patents.

(Adjourned to Wednesday, April 1st, 1931, at 10:30 o'clock A. M.)

FRANK W. DAHN, resumed:

DIRECT EXAMINATION BY MR. HODGES (Continued):

Q77. Mr. Dahn, the statement in the specification
2340 of the Stephens patent in suit has been made that the latch reaches forward and presses the cross thread into the "eye". Do you recognize that as an attribute of the Stephens patent? A. That is a fact that seems to be inherent in the punch method, as used in the pivoted latch needle. It is a characteristic of such a process, although not strictly essential.

Q78. Proceed. A. One reason why that is true is with a short latch it would not happen. It does not happen with a short latch. It does happen in this preferred embodiment of this invention as described in the patent. It is illustrated in Fig. 5.

Q79. Do you find it a limitation, that is, do you find a limitation to that in the claim? A. No.

Q80. No reference to that? A. That is a thing that happens. It is not an essential part of the process, in my view of it.

Q81. In the finger method, state whether or not the latch ever reaches forward and grasps the next thread and presses it into the eye of the needle?

The Court: The sliding latch?

Mr. Hodges: No, I am talking about the pivoted latch.

2342

By Mr. Hodges:

Q82. Proceed. A. As far as I understand the finger method as practiced with any type of pivoted latch needle that I am familiar with, that would not happen.

Q83. Are you sufficiently familiar with this to show the Court why it would not happen by a demonstration? A. I think so; perhaps rather awkwardly.

Q. And what would happen by the punch method, the so-called punch method? Do you care for this? (Handing witness items.)

2343

Mr. Hodges:

I now show the witness Exhibit E-48, egg cup and stocking.

Q85. Have you got an ordinary latch needle? A. Yes, sir.

The record may show that the witness started the demonstration over an egg cup and was then requested to start over again, whereupon the demon-

stration was made on a harp, Defendant's Exhibit NN.

BY MR. HODGES:

Q86. Now, will you explain to the Court, as you go along? A. On this harp, I insert the hook between the two parts, representing runs on the ladder, and start one of those runs back over another to form what is analogous to the selvage of a stocking, the beginning of the fabric, and turn the
2345 hook back, substantially to the plane of the fabric, moving it forward to open the latch.

BY THE COURT:

Q87. That is the measure of your forward movement, opening the latch? A. No, your Honor, that is just for opening it.

Now, insert it under the next part corresponding to the run—no, I then move it forward to allow one of these runs to pass back over the end of the latch in position to close the latch, then reverse the movement of the needle, thereby closing the latch over the last taken run and drawing it underneath
2346 the other to form the equivalent of a knitted stitch; bring the needle forward again in the direction of its length upon the latch, back again and underneath the next run, forward again to clear the latch, back again forming another stitch and so on.

It is to be noted that with a very coarse fabric, such as that represented by this harp, the parts are very easily seen, and I have found, however, in a fine fabric, it seems to come natural to turn the needle on the side so that the latch falls over to the right. This for the reason that if you hold the needle with the latch up you have trouble in seeing

this fine yarn, but the natural thing, in my estimation, for the worker, is to turn the needle so that you can see it.

BY THE COURT:

Q88. Does that make the guard increase the importance of the function of the guard, to allow it to lay on the side, like that? A. This needle has no guard, but with the Stephens needle, the guard would not be of any assistance in the practice of the finger method; in fact, it would, I should think, stab your finger. In the second place, it would be 2348
in a position to spear into the yarn, if you held the needle in the position indicated by me, as the preferred position.

BY MR. HODGES:

Q89. Would you say, as shown in the Pogson patent, for instance? A. Yes, that is just what I conceive to be shown in the Pogson patent.

Q90. Will you point that out to the Court while you are there? A. It is difficult to say precisely what is shown in the Pogson patent for several reasons. One of those reasons is, from Figs. 3 to 2349
8, there are shown only small parts of cross threads or rungs, and no side border of fabric where the yarn has not run, but as I conceive this showing to be, the needle in Fig. 3 has been hooked back to engage the last loop, which is difficult to do with a fine fabric, but easy with a coarser fabric. The last loop having been engaged, the needle is turned over with the handle end toward the operator or directly past him, and in Fig. 5, the needle is moved forward in the direction of its length, still further in Fig. 6 until the latch is clear. Then it

2350 is retracted in Fig. 7, moving forward again in Fig. 8 to engage the next run and so on.

Now, if the latch turns to the other side, I think you will find some difficulties. One thing about the latter is that in operating this way, the hand naturally falls somewhere toward the right and so comes toward the right side of the run. Now, if you worked down in the plane of the fabric with the latch turned to the right, it appears to me that you are in a more natural position and in a position where you can see better what you are doing.

2351 I have tried this with the latch toward the left and it is difficult for me, but that perhaps is not very significant.

By Mr. Hodges:

Q91. In that connection while we are speaking of Pogson, I call your attention to lines 36—will you read three or four lines there, that sentence ending with line 42. A. "The needle thus engaged is then moved to the position shown in Fig. 4 to enable the forward hook end to be directed towards the adjacent piece of thread or yarn *g* under which the hook is passed as shown in Fig. 5 and moved

2352 forwardly until the latch *b* passes the loop *f*."

Q92. You notice the word "towards"? A. Yes. "Towards the adjacent piece of thread or yarn *g*."

Q93. What does that mean in your opinion? A. Well, it is an apt word to indicate the direction or movement of the needle.

Q94. Mr. Dahn, you have not yet made it clear to me and I assume not to the Court, whether or not a needle operated in the plane of the fabric, or on the surface according to the finger method; whether or not the latch would have the function of ever pressing the cross thread into the eye of the

needle. Can you demonstrate that? Do the two different things: Show how it happens. Incidentally, with the Stephens method show how it happens to it. Do it on a stocking where the threads are close. I do not know anything about these proportions, although they have been stated. You are dealing with a different situation with this long side thread, I take it. A. Yes, sir.

Q95. In other words, is there an exact difference brought out there by the expression that the latch forces the cross thread as shown in Fig. 5 into the eye of the needle as distinguished from anything 2354
that Pogson says, or anything you have known in the finger method? If you find a difference, what is that difference due to? What causes the difference?

BY THE COURT:

Q96. What are you using, a plain needle or what kind of a needle? A. This is a plain latch needle, not a magnetized needle, and no guard. It is a needle that was given to me by Mr. Stephens, but I recognize it as a plain latch needle.

Q97. Do it over your finger and see if there is any difference between that and the punch method, 2355
as to the operation of the latch on the forward cross thread. A. I repeat the operation previously performed, with a plain latch needle, and it is evident that the movement of the latch has nothing to do with forcing the next rung into the eye of the needle.

At the time that you take up the new loop, the latch is completely back and completely open. It does not move until after that new rung has been taken and the previous loop is dropped off the end

of the latch, and the movement of the needle has been reversed.

Q98. Are you sure you have got under for your loop in demonstrating there, that you got the latch down against the finger and caught the next cross thread there? A. The two threads on the top of the needle are all we need, one of them being the loop. This is the loop which is now in the hook consisting of three or four runs, due to my ineptitude. It is now forced to open the latch, and remains on the upper surface formed by the rear face of the
2357 hook and the face of the latch while you go back underneath the next rung.

Q99. Will you try that again? A. Yes, sir. The latch has nothing to do with forcing the run down into position. It is clear back and inactive.

BY THE COURT:

Q100. By the fishing or surface method, the function of the latch as a grasping mechanism is nil, is that your contention? A. Yes, sir.

Q101. I thought it was nil, all the way through in any other method, I may be wrong about that. I agree with you that it is wrong in this particular
2358 method. A. Yes.

BY MR. HODGES:

Q102. Now will you show with the punch method what happens and the significance of our original disclosure with the punch method, if you draw such a conclusion. A. Yes.

Q103. Will you show the direction of the run and where you hold the needle relatively thereto? (Short discussion off the record.) A. The fabric is in substantially a taut condition over the holder,

which is an egg cup, and the run is approximately straight diametrically of the top of the cup, and parallel with my right fore-arm. The needle is held about in the position that you would hold a lead pencil that is about at an angle of 50 or 60 degrees to the plane of the fabric, and angling over to the right.

The needle is moved up and down through the plane of the fabric in an attempt to perform the punch method.

The Court: Yes, that would be an angle of about 45 to 60 degrees. 2360

Mr. Morris: You seem to be getting three or four threads.

The Witness: Very likely. I am not very apt at this.

The Court: It is such a big needle, the size of the eye is so enormous compared to the fabric, that it would be with the utmost difficulty that he could get it to go up and down anyway. It is so huge. We are trying to determine whether the latch in the punch method has the function of pressing the next rung into the eye.

The Witness: Yes. 2361

Mr. Hodges: That is our idea here, your Honor.

By Mr. Hodges:

Q104. Will you show that to his Honor. A. Yes; just now as the needle comes up through there, whether the latch forces the next yarn into the eye of the needle.

2362

The Court: This is such an inapt instrument with that enormous hook and small fabric, it seems rather difficult to do it.

Mr. Hodges: Yes, it is.

The Witness: Maybe if you will give me a little coarser fabric, I can do better.

Mr. Hodges: Maybe if Mr. Stephens can do it, he can show you in a minute just how to do it. I think it will save a lot of time.

The Witness: We are trying to show you how the latch comes over here.

2363

Now, we are coming up to the latch which turns over, resting on the next rung and bend it down toward the shank of the needle, which, at the angle that I am sitting here—can your Honor see that?

The Court: I see what you mean, it closes there about simultaneously with the arrival of the hook, I should say. Of course, the hypotenuse, so to speak, of your triangle, if you take the two sides—the latch is so long, that is, the latch is longer than the distance of the two rungs, so you have to have an angle in order to operate it at all with any degree of

2364

speed. That is inescapable, is that not so?

The Witness: Yes, sir, it is necessarily true, I think.

The Court: When you are coming up on the back stroke in the pump method, the latch is on the opposite side of your operating hand toward the left.

The Witness: The latch will strike the next rung over to the left end of it. I think I have a good position there.

Mr. Morris: I cannot see what you are doing, and I wonder, Mr. Dahn, if you are catching one thread or two.

The Court: He is doing all right, but this is such an unmanageable length—

The Witness: This is simply because the one I have is a plain, unmagnetized needle, and I believe it represents—

The Court: The motions?

The Witness: Yes. The latch is nowhere in the neighborhood of the next rung in the finger method and could not possibly have an 2366
effect on it, regardless of the degree of effect it may have here (indicating).

The Court: The thing is, in the punch method, the latch coming down synchronizes with the rest of the hook, so it allows it to slide in—whether it bends it or presses it, of course it may according to how you hold it, I suppose, but whether that is a function of bending it, I doubt. It seems to me just a synchronization of the two things. The latch is on a slant and the hook comes under here, and as this goes up the slant, it happens on the backward pull, the latch gets to the hook at the same time that the material gets to the 2367
hook, so that it really acts as a sort of inclined plane along which the material slides towards the hook, so it may and probably does exercise a certain amount of pressure.

The Witness: It gets there a little sooner, I think.

The Court: You think it does? Then it does exercise a certain amount of pressure.

The Witness: It is merely a distinguishing characteristic, which helps you to identify this one, as distinguished from the other process.

2368 *Frank. W. Dahn. Called in Rebuttal. Direct.*

BY MR. HODGE:

Q105. Can you explain just why the cross thread is necessarily caught in the hook in the finger method before the latch swings around to entrap it, as distinguished from the punch method? A. In the finger method, the latch is wide open at the time that you take a new run or thread and it stays so until after you have cast off the previous loop over the end of the latch. In the punch method, you take new threads, because the latch is
2369 then being closed by the previous loop and thrown forward toward—moved by the pivot toward the rungs of the ladder. Now, the next rung must get in to the eye of the needle before you cast off that old loop, otherwise you would lose the fabric—you would get the needle out of the fabric entirely. The taking of the next rung occurs in one case while the old loop is on the latch holding it open; in the other case, while the loop is back of the latch and closing it.

BY THE COURT:

Q106. Why don't you say the taking of the ob-
2370 ject rung to distinguish it from these other rungs, the one that you are aiming at? A. Yes.

The Court: This appears to be to me what I called a fishing method; the latch does not have any function, that is, what rests on the punch or pump method through the fabric, it is apparent the latch presses on the object rung of the ladder, as the hook is raised, and that the latch in so doing makes a sort of inverted inclined plane on which the object rung slides into the hook, the rung or loop slides into the hook.

The Witness: Provided we are using a pivoted latch needle with a sufficiently long latch.

The Court: Yes, provided you use a pivoted latched needle with a sufficiently long latch, and I should think the greater the length of the latch, however unwieldy it might be, the greater your pressure would be.

The Witness: I think so.

The Court: I think also with the length of the latch, that it necessarily affects the position in which the operator is to hold the in- 2372
strument, because you have got to remember that we are dealing with the question of an angle to a rectangle and the latch is an angle perpetually crossing a rectangle, and also you have to have a line to clear that rectangle.

The Witness: I think that is absolutely correct.

The Court: With the sliding latched needle, it would not be the most efficient place to do it. In other words, working on the side, with a pivoted latched needle, would be natural and efficient and the proper way to do it; with the other one, it would be the least efficient way to do it, and the tendency of the sliding latched 2373
needle would be to work almost in the direction of the run. The head of the needle comes directly—I don't mean the head of the needle, the handle of the needle is in the direction of the run; in the other one you would have to do it off to the side. The reason of that is what I should call the geometry of the situation. You have this series of rectangles; you have something to come inside of the rectangle to be any good, and that is the latch; the

2374 shorter the latch, the better you are, and the more nearly you can approximate the direct line; if you eliminate the pivoted latch, I mean if you eliminate the pivoted latch altogether and have the sliding latch, you come to the point where you are in direct line, and that is the best place for you. That is the way it works out in my mind, at least.

The Witness: That is the theory, your Honor.

2375 By Mr. Hodges:

Q107. Will you state your observation about that? Do you agree with the Court or differ, or can you explain your position on that? A. As to the theoretical statement?

Q108. Yes. A. I think it is entirely correct.

Q109. And you think that the sliding latch needle would be better in the vertical plane running through the rung? A. On theory, yes, I should think so.

Q110. In practice, have you observed anything with regard to that with the defendant's method? A. I have seen the Vanitas system, what I under-
2376 stood to be Vanitas system, in use, so advertised at the Hosiery Show in Philadelphia, in the spring of 1929 and 1930, as I recall. I think not before that. They had a booth near the entrance of the Commercial Museum, at the opposite end was the Stelos exhibit, approximately, as I remember, and they had their table with a machine on it and a young lady attending the exhibit and demonstrating the repairing of runs. According to my recollection and observation she held this needle or the instrument, the needle holder over to the right of the vertical plane, passing through the run rather than

directly in the plane, and she had a good bit of trouble straightening out the runs afterwards, possibly on account of so holding it, and that has been my observation both times that I saw the demonstration there, as I recall. I am not sure at the moment of any other particular time that I witnessed the operation of this machine, although my impression is I have seen it somewhere, but I don't remember where and when.

Q111. Now, in this demonstration which you gave the Court, could I put it this way: In the finger method, which I believe you said exemplified the Pogson patent, and the punch method, does it amount to somewhat of a difference in timing of the latch coming towards the hook in the two operations, as an explanation of why the cross thread gets in the path of the latch in the Stephens method, and does not in the finger method? A. I think it could fairly be put that way, that is to say, in the one case, in the finger method, the latch is not moving toward the hook at the time that the objective rung is being taken, whereas in the punch method it is moving—the latch is moving toward the hook at the time the objective rung is taken. I may say that the Pogson patent does not exemplify the only way of carrying out the finger method, but it is, to my mind, a clear example of a way of carrying it out with the use of pivoted latched needle. That method can be carried out by the Ortega needle or by crochet hook or possibly in other ways.

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Q112. DeMarr, for instance? A. Yes, also, of course, by the implement shown in Wilkomm's book, which is of record in this case.

2380 *Frank W. Dahn. Called in Rebuttal. Direct.*

By Mr. Hodges:

Q113. What is that shown by? A. That is shown by the wire. It looks more like a button hook than anything else that I can make out. It describes it as a device used in repairing runs in knitted fabric.

Q114. In prosecuting a patent and application through the Patent Office, will you state whether or not the Patent Office is ever concerned as to the matter of whether the applicant's construction would be an infringement on any other prior
2381 patent? A. No, it does not concern the Patent Office at all.

Q115. Why not? A. The function of the Patent Office primarily is to grant patents for devices which are new and useful and display invention. By the word device, I mean to include everything that is patentable, including plants.

Q120. Is that according to the statute, or not? A. That statement as to devices, as to new and useful, is to be taken to include anything that is absolutely new, and also improvements on things that are old, whether they be infringements on patents, or not.

Q121. That is according to the statute? A. Yes,
2382 sir.

Q122. And the matter of infringement is a matter by statute entirely with the Federal Court? A. I should say so.

Q124. Can you point out the details of the Finch patent which differentiated his latch from any ordinary latch needle? A. I found at least one such detail that did it—the shoulder.

Q125. And on the question of equivalency. I want to ask you a few questions to see if the point in common between the Stephens needle and the Finch needle come down to latches. A. All right.

Q126. Will you state whether or not both of the latches entrap the cross thread in the eye? A. They do.

Q127. State whether or not both of them act as a switch to transfer the loop from the eye to the top point of the needle and get it off, cast it off. A. That is a roughly correct statement.

Q128. The fundamental function; correct me, if I am wrong. A. They each act to permit the needle to be drawn back through a loop, and to bring a new yarn through that loop to form a new loop.

Q129. How about the closing; is that common to 2384
both? A. They are both self-acting needles, and the thread closes and opens the ordinary pivoted latch needle and closes and opens the ordinary sliding latch needle. Although that is a fact, openers and closers in the practical art, are used with both of them to close and open both of them. In the case of pivoted latch machines, they actually have a pilot device that passes through to open the latch that possibly might be closed. They have closers in both types of machines.

Q130. What opens and closes the latch in the Stephens and Finch needles? A. In the Stephens needle, the magnetism starts the opening. It is 2385
opened the rest of the way by the action of the thread. It is closed by the thread. In the Finch needle—well, I will get that in a moment. In the Stephens needle, the preferred form of his invention, it is opened by magnetism. In the Finch latch needle, the thread opens and closes the latch.

BY THE COURT:

Q131. Suppose we conceive of a shuttle that may be operated by electric magnetism and that that

can be run backwards and forwards through something stretched over a horizontal plane and reknit. Would that be something that would be an infringement on your method? A. There would be an infringement on our method?

Q132. That is what I was inquiring. A. I made the suggestion yesterday as to the possibility of assisting you today. I was thinking about this this morning. This might help you as an analogy. A process is a method, a way. We are doing something to get somewhere. A process or method or
2387 way is like a toll road. Someone may be able to build such a road and have the right to charge toll to those who go over it. If you want to go over his road in an ox-cart or a wagon or a buggy or an automobile or a sleigh, you may do so. All these things may be patented in themselves, but you have to pay your tribute. If you want to follow the old road through the swamp, that is something that the owner of the toll road has nothing to do with. You may do so if you like. The finger method is the swamp road; the Stephens method is the toll road. That suggestion may be something of value to your Honor. The only place where the analogy
2388 falls down, is that with this patent you can only have 17 years in order to collect tolls.

Specifically answering your question, if such a thing were possible commercially, it might or might not be an infringing method. It would be hard to say. Certainly, my impression is at the moment, that that would not be an infringement, although it might be.

Q133. Would it be because it was not a needle? A. It would not be a needle, of course.

Q134. That sort of things helps me in thinking about this case. I have to get this thing worked

out in my mind, this concept; it is not clear now. A. For one thing, it is not a needle at all. The device would hardly be considered as being held in any particular relation to the fabric.

Q135. It would be running up and down through it. We can imagine a little shuttle going backwards and forwards. A. There is no latch to be closed over the thread.

Q136. It would be exactly the same thing. When you get there, you would probably have a smoother mend than in any of these other methods, we will say. You would have exactly the same result as the 2390
other, and you would be using it on the egg cup and you would have to stretch the fabric. That is something that is important, with the plane fixed regularly and held so that this ladder can function easily with the repair holder. The thing that is bothering me all along is why, if the patent to Finch for his needle is a good patent, and so far as you know it has not been overturned and he can not use it, what is the good of the patent to him? It seems that he has a monopoly for his machine, but under your idea he does not have the right to use this machine to do something with it. Why he is not doing it in a different way from 2391
somebody that has a different patent by which he may accomplish the same purposes, that is the thing I want to get clear in my mind. How can a man have something that is patentable that is not sufficiently new to give him a different way of doing a thing? Can you explain that to me? A. To come back to my analogy. The nature of the vehicle that goes over my road is immaterial. It is using the road that I charge for. It may be a sleigh which certainly is a different type of machine, and has an entirely different action from any of these

2392 *Frank W. Dahn. Called in Rebuttal. Direct.*

other wheeled vehicles, but they have to pay tribute just the same. The instrument is different, there may be a slight or material difference in the operation, but they use the same path.

With an automobile it is covered with 1,000 patents on his machinery, and if he wants to use the same road to go over it to do the same thing, then he is liable.

There have been a lot of needles patented since the Stephens patent.

Q137. Does not your analogy fall down by as-
2393 suming a continuity of the toll road and of the process as something that you have to get there? That is not so well stated, but you get my idea. A. Yes, sir.

Q138. If you are assuming that a person had a toll road with a creek to cross, and one person laid down a sort of pontoon bridge, and the next fellow came along with a tank, and they went over it that way, there you would have something that is a little better analogy. I like your toll road as a general equivalent of the process. The toll road is something that is stable and set, but the process is something that is not. The toll road is something
2394 that is structurally built and solid, but the process is something that is structurally fluid. You have got to have your needle, a needle of some kind, to accomplish that process. I am with you on the part of the toll road, but I prefer to have a stream to cross. A. I am not surprised to have the toll road fall down somewhere. You see it was just the best one I could think of.

Q139. It is a very good analogy and I appreciate it. A. Yes, sir.

BY MR. HODGES:

Q140. That covers the process, does it, your toll road is the method? A. Yes, sir.

The Witness: If Stephens had invented a method and no means at all, and had gotten a patent on just that method, anybody following him using that method would be an infringer, regardless of the needle.

BY THE COURT:

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Q141. So it is of the utmost importance to see whether they are using this method, but if somebody else is using this method and whether this was so clearly defined that we can know exactly what the method is, which Mr. Stephens has, and then find out which other people, if any, are excluded therefrom. A. Yes, sir.

BY MR. HODGES:

Q142. Is there any reference in the claim, to the pressing of the latch against the forward cross thread? A. No.

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Q143. Is there any mention of magnetism? A. There is not.

Q144. What mechanical elements in the combination for unitary results, as they often say in the Patent Office, is mentioned in the carrying out of the process defined by the claim? A. I should say that the mechanical elements that are mentioned are: Holder, the repairing device, certain details of the device such as a hook, and a pivoted latch.

2398 *Frank W. Dahn. Called in Rebuttal. Direct.*

Mr. Morris: Will you read the last word? I do not get it.

The Witness: The hook and pivoted latch.

BY MR. HODGES:

Q145. In your experience— A. (Interrupting) Just a minute. I have not finished my definition of that.

Q146. Go ahead. Pardon me. A. I think that is all, unless you consider a thread in the fabric as a
2399 mechanical element which I do not.

Q147. In your experience in the Textile Division of the Patent Office how were sliding and pivoted latch needles generally characterized and regarded? A. In this country they generally call a latch needle of either of these types, a self acting needle, as they are not actuated by anything else. They are called self acting needles, in England.

BY THE COURT:

Q148. When you speak of a latch needle, does that connote to your mind the pivoted latch needle only, or do you also think of a sliding latch needle?
2400 I think the sliding latch needle, the word "sliding" in that is a very stupid word to use for it. It always trips up my mind. A. I think of either one indiscriminately, and that may be of course, because of the experience that I have had with them.

Q149. Of course that makes a difference when you have had a great deal of experience with them. A. I have had a great deal to do with sliding latch needles, however unfortunate the term may be, and devoted considerable thought to that proposition when I was in the Patent Office, and ever since.

Q150. The pivoted latch needle is very properly called a latch needle. It is a type of latch that you think of in the proverbial latch string hanging on the door. You think of the latch hanging on the door in the olden times. The other one is not such a latch. You think of that as the early sample of hospitality, with a bolt that is slid shut or open. A. There is no rhyme or reason to those names in the textile art. I can give you much worse examples than that.

Q151. In other words, it may vary from one to the other? A. Yes, sir.

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BY MR. HODGES:

Q152. Taking the Judge's analogy in the latch of a door and the bolt of a door, they are both means for fastening the door, are they not? A. Yes, sir. It is like a sliding door and a swinging door. It is a means for closing and opening.

Q153. You mean the sliding door and the swinging door is an illustration of the difference between the sliding latch and the pivoted latch? A. Yes, sir.

BY THE COURT:

2403

Q154. Opening and closing something in a different way? A. Yes, sir, accomplishing the same result, closing and opening.

BY MR. HODGES:

Q155. Both done according to the same method, accomplishing the same end. A. In the broad way. They do the same thing in a broadly similar way.

Q156. The question, I think, was dealt with by Mr. Chapman as to the interchangeability as a test of equivalency. Have you any opinion on that? The interchangeability of latches in these two needles. I think we should say something about that. I think I should have stated method there, probably. A. I do not know that interchangeability of latches means very much to me. The needles are interchangeable in function and in use. The ordinary use to which they have been put is for reknitting runs. The latch needles are probably
2405 used in knitting machines that move independently, particularly; of course other types can be used, either the sliding or pivoted latch needles can be used in those machines, but the question of interchangeability of latches in a needle of a sliding latch type and a pivoted latch type would not amount to very much. The fundamental thing is that they are both self-acting needles.

By the Court:

Q157. He said that was one of the criteria by which a person could determine equivalency of two
2406 common mechanisms. I do not suppose that you would call a mechanisms equivalent. A. You can not take a pivoted latch out of a needle and substitute a sliding latch for it to the extent that it is not made the same. That does not make sense. You can do the same work with either one of them. They are both self-acting needles.

Q158. They are parallel means for accomplishing the same things. A. They are well known means for use in knitting machines for knitting by simple reciprocation without any help.

Q159. Would one say, when you come to deal with the question of equivalency that one of the criteria by which you use to test it is the interchangeability of parts? You would answer it, I suppose, by saying that this is a method, if you can interchange some of the things that are used in accomplishing that method, it is the equivalent, no matter what the other means may be? A. Yes, sir; the instruments may not be duplicates, but they are equivalents.

Q160. We are thinking of one method, of a method, rather, whether one method is the equivalent of another method. You do not say that the needles are interchangeable with each other, but you say they are interchangeable in the method? A. Yes, sir; they are exactly interchangeable in the method. 2408

161. With the edge possibly in favor, as a mechanism of the latch needle. It strikes me that that would be the mechanism that was most adaptable. A. Do you mean the sliding latch?

Q162. Yes. A. I could not say so. It might be so.

Q163. I think if I was going to set up a business for doing this sort of thing, I would use a sliding latch needle instead of another latch needle. That is what I have learned from the geometry of that. A. There are arguments on that that would show up after you got into business. 2409

Q164. Possibly so. A. I believe it would.

By Mr. Hodges:

Q165. On the matter of vibration that was brought up by Mr. Chapman, the relative vibration. But I think it is relatively immaterial; as a point

it might help the Court as to the comparative value of the two needles as an instrumentality in carrying out the method. Have you any notion or information on that? Have you any opinion as to that? A. So far as the needles are concerned, one being driven by a motor and one by hand power. If you are going to use the Finch or Stephens needle by hand, there is no question of vibration to cause any trouble. If there was any vibration that would happen in the latch, then the latch is such a little thing as compared with the bulk of the needle, it seems to me that it would be absolutely immaterial.

Q166. Have you got any idea on that? A. Yes. I have. The thing would simply be a vibration of the whole form. It would not amount to anything. The relative vibration of the two needles would be so close, it would be very difficult to determine any difference between the two of them.

BY THE COURT:

Q167. When you use it by hand? A. Yes, sir.

Q168. When you use it by machine, what would you say about that? A. That is quite a different thing. These Stephens needles are used by hand.

Q169. They brought that out the other day. A. Yes, sir. I do not think it is a material thing one way or the other.

In the machine I would say this: There again the vibration may be due to the transmission wires in that casing, which has a lot more bulk than a needle. I did not mean that the greater part is due to the bulk of the wire, and not only to the inertia of the weight of the wire, but the fact that it operates in a curve, is going to have a tendency to have it buckle—I don't know what the word is, but your

Honor will appreciate that it is operating on a curve and very rapidly.

By Mr. Hodges:

Q170. Which has the more suddenness of stop and start, which needle, the sliding latch or pivoted latch? A. Well, as I understand the description of that vertical shoulder in the Finch sliding latch needle, that should have the more abrupt stop.

Q171. More like pounding, would you say, like the impact of a hammer? A. Like pounding on a very delicate thing, ill adapted to bear any such stress, that is, such as a thing as a silk thread, 2414
which may become frayed due to that impact, and it is often worn before the mending takes place or run repair takes place.

Q172. Now, I will call your attention to the Van Dyke patent 1,745,462, merely as illustrative of what I understand the defendant's disclosure of its present mechanism is; will you state whether there is any recognition of equivalency there, in your opinion, between the old forms of latched needles, the pivoted latch and the sliding latch?

Q173. In what way? A. Well, both in the drawings and in the descriptive part of the specifications. I have a particular place in mind—Just a 2415
minute.

The Court: There is one place, line 95, page 2, where it intimates the use of a sliding latched needle, is that what you mean?

The Witness: What I am looking for is where he refers to both types of latch.

By Mr. Hodges:

Q174. Perhaps in lines 15 and 16 of page 2? A. Oh, yes, that is right. It commences in line 15 to

2416 *Frank W. Dahn. Called in Rebuttal. Direct.*

18 of page 2, particularly where the pivoted latched needle and sliding latched needle are both referred to there as having a thread-actuated latch for closing the hook.

Q175. Will you read that whole sentence? A. "Sometimes a sliding latched form of needle *t* is used as shown in Fig. 7 in place of a pivoted latched needle, and both of which needles will be referred to in the claims as having a thread-actuated latch for closing the hook."

Both forms are shown in the drawings, and the
2417 term "thread-actuated latch" is used in several claims, for instance, as in Claims 10, 15 and others.

BY THE COURT:

Q176. That is, as differentiated from the spring or magnet, or anything else, I suppose? "Thread-actuated" is not used only as descriptive of a sliding latched needle, is it? A. Oh, no.

BY MR. HODGES:

Q177. Now, one question before dealing with the prior art patents. Referring again to the patent in
2418 suit, do you regard this as virtually one or two patents? A. Well, it contains article claims and also method claims, which is according to the United States Patent Office practice of allowing claims in a single patent and where they are closely related, even if they do fall into separate statutory classes.

BY THE COURT:

Q178. By article claims, you mean mechanism claims? A. The needle. I do not regard a needle as a machine. I call it an article of manufacture,

and so refer to them as article claims. The same would happen in the case of claims about machines and methods, sometimes. Frequently there are three different classes falling in the same patent, and in that sense there are two patents in the same paper or instrument.

BY MR. HODGES:

Q179. State whether or not they are regarded as distinct? A. Well, each claim of a patent is a separate patent and it has been so stated by the Courts in certain cases, and to that extent they 2420
are distinct, but they are closely enough related so division is not required and you do not have to file two separate applications and take out two separate patents.

Q180. Do you know whether or not sometimes contracts are made based on just one or two claims of a patent, as distinguished from the whole patent? A. Why, yes, they are sometimes made. I don't know as I ever drew one, but they are sometimes made.

Q181. I call your attention, in going into the prior art, to the Hartzell hook, Defendant's Exhibit U-59, and I will ask you to take particular notice 2421
of the guard or guide, as Mr. Hartzell, I think, called it, which is the narrow auxiliary strip of metal alongside the shank of the needle, and will you compare that with the element 6 of the patent in suit and state whether or not it is the same in its functions as explained by Mr. Hartzell and whether it has all the functions of the Stephens guard? A. The strip at the right hand side in the needle in the Hartzell Exhibit U-59, in the same general position as in the patent and in the Stelos needle, with which I am familiar. The most im-

portant function of the Stephens guard would be entirely absent, however, in this Hartzell needle, since the latch extends up over the strip which I shall also call a guard—no, I will not call it a guard, because it does not guard the latch at all. I will call it guide. In the Stephens needle the guard protects the latch by causing the newly taken rung or cross thread to ride up over the point of the latch and be kept completely away from it, so that when you reciprocate the needle to draw, the new loop is cast off and the old one forms a stitch, the
2423 object rung or cross thread will not close the latch and cannot close the latch, which is closed, not by that rung or cross thread, but by the loop at that time on the shank of the needle.

By Mr. Wooster:

Q182. Mr. Dahn, are you talking about the Stelos commercial needle, or are you talking about the Stephens needle of the patent in suit? A. My remarks, at least so far, would refer to both, I think, with equal propriety.

By Mr. Hodges:

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Q183. Will you show the Court, perhaps with that little piece of string, what you mean by guarding the latch and the function? A. Simply this, that when you thrust the needle down through a loop to pick a new rung of the ladder with the cross thread in this device—

By the Court:

Q184. In the Hartzell? A. Yes, in the Hartzell, it slips right back like this, as far as necessary,

with the stroke of the needle, then when you come back—

Q185. You don't have to go in between the guide and the shank of the needle? A. If you are using this according to the punch method, the Stelos method; there may be other ways of using it, but if you are going to use it according to the Stelos method, it will apparently inevitably go to that latch.

Q186. Whether you get it in between the guide or not—in between the shank and guide or not? A. You would not get it in there according to the Stelos method. Maybe you could work it some other way too. 2426

BY MR. HODGES:

Q187. You are saying "it", are you referring to the advance thread that has not been caught? A. The object thread. Let me say it this way: In the use of the Stephens needle, as far as my observation goes, you never get the object thread between the latch and the guard, you don't want it there; you want it away from the latch; with the Hartzell needle, if used according to the pump method, it will close the latch and you will have nothing in the hook and presumably that was not the way he used it. 2427

Q188. In other words, you express it this way, by saying that in the Stephens method it is a guard and not merely a guide because you can run it over the top without backing up the latch at all? A. That is the main function.

Q189. In the other one, you say it is constructed that if you ran it over the top of the guard and in between, you call it guide in that case, in between

the guide and the shank, then you would trip the latch, just the same? A. That is correct.

Q189. One is a guard and one is a guide? A. That is correct.

Q190. How did you understand the threads and loops are caught during Mr. Hartzell's testimony? Do you know whether he said there were two threads between the guard and the shank, that is, the loop and the advance thread? A. That is the impression that I have of what he said, but whether that is derived from hearing it or from subse-

2429 quently reading the testimony, I cannot say.

Q191. Now, as to the Stephens guard, the guard is to prevent that, is it not? A. The principal purpose of the guard, as I understand it, is to prevent the latch from being tripped by some other object thread, the thread even ahead of that, so losing everything out of the hook of the needle.

Q192. What would you say was the primary function of the guard in the Stelos needle? A. Well, it is to shoulder off the next thread of the rung, the next round or cross thread, and others as well, and prevent them from closing the latch.

Q193. Now, will you make it clear what differ-

2430 ence there is in having the guard which I take it, is a secondary function, come up over above the open end of the hook, so that if you were to look at it sidewise toward the guard, you would see no latch when it was open, I mean the difference from Hartzell?

Mr. Hodges: With the edge, with the guard toward you, your Honor, opposite your eye, you would not see the latch when it is open, but in Hartzell you do. Now, the secondary function is the guard still holding the forward

thread away from the latch, that is what I am getting at, with a Stelos needle.

The Witness: It seems to me we are still talking about the same function. The guard is wide enough so that when viewed from the right hand side of the needle, the needle being held in a plane of the eyes, with the hook in a vertical plane.

BY MR. HODGES:

Q194. That is all right with that loop, but we are talking about the thread in advance. 2432

The Court: I understand it does not make any difference apparently with this loop, whether it is over both or the shank only.

Mr. Hodges: The next thread is not in that position quite as your Honor has it. Let me ask this:

Q195. Do you claim that, Mr. Dahn, one is a loop and one is a cross thread?

The Court: Here you have a cross thread in advance, and here you have another thread toward you like this. You are fishing for that other one, moving toward that other one. Now, this, if you push it in, would go under there too, wouldn't it (indicating)? 2433

The Witness: Yes, it is not impossible to get there, but the point is this thread coming over here, this new thread, is held this way (indicating).

The Court: Yes, that is obvious. That is only to guard against certain contingencies. That is not part of the ordinary operations, is it?

2434 *Frank W. Dahn. Called in Rebuttal. Direct.*

The Witness: It is not part of the claimed method, no.

By Mr. Hodges:

Q196. Will you show the Court the two different functions, the function at the side of the guard in sheering off the needle at the edge, which guards the latch, that is what I am trying to get at.

The Witness: In going down through the
2435 loop, the latch is thrown back and the next succeeding thread or run and—

By the Court:

Q197. Is held off the latch? A. Is held off the latch, so that when you come back—

The Court: The only loop that is operating is the loop between the shank and the guard?

Mr. Hodges: Yes. In other words, we do not catch a loop and thread in there as we understood Mr. Hartzell to say he did.

The Witness: Yes, the guard also has other
2436 functions in riding along the right hand side of the run against the fabric and preventing an accidental thrust of the hook through the fabric and other things, but this feature of guarding the latch against accidental closing appears to me to be the most important feature.

By Mr. Hodges:

Q198. Has the guard any function in the finger method, the horizontal or surface method? A. I

think not. If anything, it would probably be a detriment.

Q199. Would it be a detriment in Mr. Hartzell's needle, if it is true that the loop and the next thread are between the latch and the guard? What then could the guard be doing? A. That is, in using Mr. Hartzell's needle in a finger method?

Q200. Yes, where a loop and the next thread are between the guard and the shank of the needle, as I understood him to say. A. I have not heretofore attempted to do any repairing with a Hartzell needle, even on a small scale at all, and I am not 2438
able to say that there would be any real function for this Hartzell guide. I do not understand just what the function may be. It is true, if you hold the needle with the latch turned to the left, the guide can be used to separate—

BY THE COURT:

Q201. You have to have the guide in effect, on top with the finger method, then I cannot see exactly what it does do. A. I do not see that it would have any function.

BY MR. HODGES: 2439

Q202. Suppose you try it on an egg cup, that is the way Mr. Hartzell worked it, as much as he worked it. A. I have heard this proposition discussed, that possibly this guide might be of use in singling off the next thread.

BY MR. HODGES:

Q203. Is that still down between the shank and the guard? Can you show the Court that? A. Yes.

2440 *Frank W. Dahn. Called in Rebuttal. Direct.*

Q204. We are trying to show that although the guard or guide is there, you did not catch the whole thing, and that was really accomplished in this other matter. For instance, in the finger method it would be in the way. Unless it guards the open latch, which it does not, it would slip the thread.

THE COURT:

The long latch needle is very inconvenient. You can not do anything with it. A. It is the most common thing and one that would be thought of first to
2441 do the work. The sliding latch needle is not very common in the machines.

Q205. Did you notice the guard in the Hartzell needle? Is there any difference from the latch down? A. The Hartzell guard is narrower in a vertical sense, holding the needle horizontal with the hook in a vertical plane.

Q206. Do you mean this guide out beside the latch is reduced in size? A. Yes, sir, it is further back from the end of the hook than the Stelos needle. It is further back than the illustration in the Stelos patent. What is the significance of that? I don't know.

2442 Q207. Will you turn to the prior art patents that have been cited; can you classify those in some general way? A. I can separate a great many of them that relate to the mending of hose, and those that relate to the repairing of runs or wales in stockings. Some of them are to be used on a sewing machine and some of them are to be used in knitting machines. I call your attention to these. The first one is Foucar, a German Patent, No. 35795, Arnold U. S. Patent No. 93394, Shedlock U. S. Patent 113,213, Graf U. S. Patent No. 916,926. Those refer to

the mending of stockings instead of the mending of runs. In mending in one way or other, the fabric is reconstituted by putting a new yarn into it. In the case of the ordinary darn that has been done in the manner of weaving by inserting the threads in one direction, either wale-wise or cross-wise. Then other threads are inserted the other way like the warp and weft of the loom. In the case of a sewing machine, the machine is run so as to sew a chain of stitches across the hole like a darning thread.

It is just run back and forth wale-wise and then cross-wise.

2444

Another method is disclosed in this reference, Patent to Arnold U. S. 93,394, in which the darn is made by sewing around and around the hole. Seemingly, it was intended to simulate a knitted fabric, but it could not possibly look very much like the fabric upon which it has been superadded.

BY THE COURT:

Q208. The effect would be that of a rosette instead of the normal fabric in texture? A. Yes, sir, it would be more like a rosette.

BY MR. HODGES:

2445

Q209. Would that disclosure lend itself to the performance of a method of the claim in suit? A. The operation of darning is radically different from the repair of hosiery runs. In darning you are putting in new material and you are not at all reconstituting the same run. You are not replacing the cross-threads which are straight, into their previous form of curved interlacing, or as my learned friend has said, concatenated loops in the wale.

2446 *Frank W. Dahn. Called in Rebuttal. Direct.*

In the Shedlock Patent, U. S. 113,213, it shows a holemending knitting machine. There the operation is started beyond the confines of the opening. There is a section of double fabric around the hole. Then it goes back and forth across a hole which has been cut out in a square form, and it continues on down until the end of the hole has been reached.

After that it goes a little further so as to connect the mended area to the body of the fabric for a suitable distance.

All of these are open to the same objection, so
2447 far as their availability as references are concerned that they are not doing a thing entirely the same as this, but on the other hand they are doing a thing entirely different and are adding to the fabric and making it clumsy and uncomfortable.

BY THE COURT:

Q210. One is a crutch and the other is a cure? A. Yes, sir; it is like putting a splint on a broken leg.

Q211. That is very much like putting a piece of silver as a piece of protection into the abdomen; it stays there but it must work all right, but most uncomfortably. You also might have a silver piece
2448 in a bone in the skull.

Q212. Put in something from the outside? A. Yes, sir, trepan the skull.

Q. 213. That is the word I was thinking of, trephining the skull, you would put in a piece of silver in the opening made in the trephine and then replace the skin over it, instead of replacing that opening with a piece of bone which would become an integral part of the skull; it would always be a foreign thing there? A. That is true.

BY MR. HODGES:

Q. 214. Do you want to go into any other of the references that have been made here? A. I do not think it is necessary.

Q215. Then do you say that the several patents you have classed together as doing substantially the same things, that is, sewing up a hole with an outside piece of thread like putting a patch on? A. Yes, sir, just putting a patch on. That can be done with a thread and a machine. Here is a stocking that I have where that has been done. This was 2450
done by one of those machines and it was put on in this manner. You can see it here. (The witness shows stocking to the Court.)

Q216. Did you get that yourself? A. I got that.

Q217. Will you show it to his Honor? A. I have. I have seen that machine working, but I did not see this stocking darned on it.

Q218. Considerable was said about this Graf patent, and in connection with it there were some exhibits, two of which I hand you now as Defendants' Exhibit BB, and which I criticized. I am handing a device which I received from the manu- 2451
facturer, I want you to have them both before you. A. All right.

Q220. Will you refer to the Graf patent and the Stewart patent, and if you have anything to say in regard to them will you explain your views to the Court now. The Stewart patent is No. 312,923, U. S. Patent. A. The Stewart patent illustrates a darning attachment for sewing machines. It is intended to be used as a device or holder for stockings or some similar fabric, which appears to be in part like that of Graf.

2452 *Frank W. Dahn. Called in Rebuttal. Direct.*

Q221. Just go ahead, and give the Court your views on that. A. In this Stewart patent it shows a holder such as the Graf, with the stocking placed over it, and rolled up, and then turned over so as to bring the exposed part of the fabric down on the table of the sewing machine. After that the hole, which is shown in dark lines in the center of the device, is presumably sewed up either across and across as seems to be indicated by the dark lines, or else around and around.

2453 By the Court:

Q222. It could not be across and across. There is no provision for it going around and around. I see. A. There is no provision as to that that I have noticed here. It is not shown just how they do it.

Q223. It is a darning machine? A. Yes, sir, it is a darning machine.

Mr. Wooster: It has an eye needle; it has an eye pointed needle, the one that Elias Howe invented.

2454 Q224. Go ahead. A. The Graf merely shows another device that is intended to be used the same way. A fabric is put on it while the ring 3 is removed, and then the ring is put on to tension the fabric across the top. It is then turned over and laid on the table of the sewing machine, and the darn is mended by the usual instrumentality of the sewing machine.

By Mr. Hodges:

Q225. Will you say that that cited an illustration of a fabric being stretched over the ring or

would you say that it cited a fabric permanently stretched over a ring? A. I take it to be a fabric stretched permanently over a ring.

Q226. Would you say that this is stretched over a holder? A. I am inclined to think that the word "stretching" is intended in the claim to be by connotation of somewhat more intent than this permanently stretched condition.

BY THE COURT:

Q227. It is a kinetic stretching? A. Yes, sir.

Q228. Your objection is to considering it as 2456
stretched for once and for all. You say it is a continuing stretching or repeated stretching by manipulation which you say would not take place when you have a permanently stretched condition of this kind? A. Yes, sir; we say it is a kinetic condition, as your Honor has stated. If it be once stretched as in the Graf patent as you have a wide run, I might say that in a situation of that kind you would have a great deal of trouble. If you had a wide run and tried to repair that, you would find that it would be very difficult to get these rungs back from their straight condition, swung back and placed in a tension condition without it being very awkward. 2457

If you had a run of three or four or five wales wide, you have got to bring each of these rungs out of a straight condition into a condition that is taut and has four or five loops in it. That fabric is going to give, and you are going to have trouble as it gets more taut.

Just what would happen if you did that, I don't know. I should think the thing would get so tight it would break the thread, if you got it tight enough.

2458 *Frank W. Dahn. Called in Rebuttal. Direct.*

Q229. "Having the fabric pulled over"—and then as it says further on down here, "after the fabric has been stretched over a suitable holder, we insert the repairing device". You would not have that to be comparable with this Graf disclosure where one of them is stretched permanently, and where you say you have a kinetic stretching, you would not want to consider them as the same? A. No, sir, I would not, because they are quite different.

In this Graf device it is stretched permanently,
2459 and held in one position so that the entire work can be done without moving it. In the Stephens holder, you have a continuing motion, which is entirely different. The claim describes that very fully.

Q230. That would be what you would consider to be the difference? A. Yes, sir.

By Mr. Hodges:

Q231. Did you include in the list you have discussed the Schulte Patent No. 125,108? A. I have not yet.

Q232. Will you do so, and state whether or not
2460 you consider it to be in the same category? A. I will.

Q233. Does this Schulte Patent come in the classification in the same category that you have been discussing, and in that connection will you also discuss the Dickson patent. Discuss both the Dickson and the Schulte patent, please. A. Yes, I would say that both of them do. After a hasty examination of this, I find that the specification states on line 12 of the first page, from the top, "Repairing of even a comparatively large hole". In Fig. 4 it shows

a stocking being stretched over a tubular device in taper form, and inside the tubular body there are what appear to be needles "*m*" as shown in Fig. 7 also in detail, latch needles with sharp points. That is also shown in Figs. 8 and 9.

Page 4 of the specification, beginning at line 4, discusses it further, and leads me to the opinion that it is the same thing. It seems to indicate clearly that these are both darning machines for replacing a fabric, repairing a hole where there is no fabric. That is done by placing in the edge of the hole an additional layer of fabric, and then 2462
working over the hole itself to darn the hole in the fabric. Also by the fact that the needles being pointed so that they may go through the fabric, I would say that that is clearly the purpose of this machine.

The British patent to Dickson refers to the mending of holes in stockings, in the opening paragraph. That is a patent that I have never seen before. I would class that as a darning patent. It looks like a darning patent in which there is a tubular device "*c*" in Fig. 2 over which the fabric is stretched so as to expose the hole at the end of this, or the top of the cylinder, and then the needles are arranged 2463
in a row inside the cylinder. Then the fabric is placed over these needles, and there is a holder in it. The yarn is supplied by the conventional yarn guide.

Q234. By a conventional yarn guide? A. Yes, sir.

BY THE COURT:

Q235. Operating lengthwise of the cylinder, do the needles operate lengthwise of the cylinder? A.

2464 *Frank W. Dahn. Called in Rebuttal. Direct.*

Yes, sir, operating lengthwise of the cylinder, arranged in a row diametrically of the cylinder.

Q236. Are you sure that it is diametrically? It is rather difficult to tell? A. Yes, sir, it is pretty hard to tell which way they are arranged. I have been looking at it trying to tell just the manner in which they are arranged.

Q237. Well, we can say it is a circle of needles in plurality. A. I will look at this during the recess and see what I can make out of it.

2465 (Recess from 1:35 to 2:30 p. m.)

The Court: We were looking at this map of Dickson.

THE WITNESS (Continuing):

This machine, the Dickson, comprises a holder in the form of a cylinder, or rather a casing which appears to be of cylindrical shape, or approximately so. In each cylinder there is a bed *a* for a series of pivoted latched needles, *b* and the stocking or the like is placed on or over the casing with the lower edge of the damaged part or hole a little
2466 above the needles or evidently across the end of the casing. Then a cam *c* is reciprocated along the bed and moves the needles up and down through the fabric or through the hole, as the case may be. The needles take the yarn from the guide *g* and are moved downward, their latches being closed in their downward movements by a latch closer *h* and evidently also by the loops previously on the needles, if any. Evidently this is a mere darning machine or mending machine.

BY THE COURT:

Q238. New thread is fed to the needles, is that right? A. Thread is fed to the needles as in the German patent previously described.

BY MR. HODGES:

Q239. Would you now refer to the Billington patent No. 1,314,565? A. This is a patent for a method of interlacing fibrous material in the form of batts of curled horsehair. Without having read this patent in full, it appears that the purpose is 2468
to give a more durable upper surface to the batt presumably for use in a mattress or the like.

In the case of Fig. 11, the batt is made in several thicknesses. The patent claims a method of connecting or interlacing this material by the use of a reciprocatory needle, which is shown as a pivoted latched needle. The operation is similar to an operation of knitting a single wale with a reciprocating latched needle, somewhat after the manner of crocheting. It certainly is very remote from any art of repairing runs in knitted goods.

Q240. I call your attention to the British patent to Lee 24,311, of 1893, which is recited as a spring- 2469
actuated latched needle. A. This patent shows a needle with a spring back of the latch in a position, apparently, to move the latch forward open position for knitting a stitch.

Q241. Was that patent used as a defense in the Gearhart case? A. According to my recollection, a spring latched needle was brought into that Gearhart case. I do not recall whether this patent was used as a defense, as I have not looked at that record since the trial.

2470 *Frank W. Dahn. Called in Rebuttal. Direct.*

Q242. Do you remember whether he had a spring-actuated latch exhibit? A. As I recall, he had. Yes, I am quite certain of that.

Q243. Do you remember whether he claimed he used a spring with his magnetism in his alleged infringing construction? A. I don't remember.

Q244. I understood Mr. Chapman to say it was impossible, in his opinion, to repair with a spring latch needle, without a suitable holder. A. Yes, sir.

Q245. I do not know just what he meant by that.
2471 I thought perhaps that he might be aiming or suggesting that the finger would be a substitute for a suitable holder. Have you anything to say in regard to that in connection with the spring latch needle of Lee? A. If that answer meant that you could not work the pump method with a spring latch needle without a suitable holder, I suppose it is correct. But to say you can not work the finger method in the manner that has been illustrated, I do not think you should have any trouble in doing that. Of course, the finger is not a suitable holder for the use of the pump method.

BY THE COURT:

2472

Q246. Did not this peddler who was here, use the pivoted latch needle, with his finger?

Mr. Hodges: Yes, he did; and he said that he learned that 3½ or 4 years ago, long since the granting of our patent. A. Yes, sir, that is what the witness said. That is why that would affect the correctness of my answer; evidently he worked over two fingers. He did something of that kind.

BY THE COURT:

Q247. Did not he make a bridge between his index finger and the forefinger, or the forefinger and his thumb, and do it in that manner? A. I can not deny that he was doing something here. He did something of that kind over his two fingers.

Q248. Unless it was a trick of some kind? A. It might be. It looked as though there was something peculiar, there was some peculiar motion there, but I could not say positively.

BY MR. HODGES: 2474

Q249. Mr. Gearhart referred to a Branson and also several other publications of the Gearhart Company. A. Yes, sir.

Q250. Are you familiar with them? A. I am.

Q251. Do you care to refer to the text and point out some of the things in there? A. I know generally what they purport to be.

Q252. Do you know whether those books were offered in the defense, in the case of the Stelos Company versus the Gearhart Company in Pittsburgh, Pennsylvania? A. I have not looked at these, of course. I assume they are the same ones that were 2475 offered there. They have the same names.

Q253. I call attention to Defendants' Exhibit A-22, which is the Book of Instructions of the Branson Knitting Machine. A. All right.

Q254. What does that descriptive matter indicate on page 23, under the heading "Mending broken stitches"? A. Mending broken stitches. That is done as described here, "This is done with one of the needles of the machine, either in the machine or after the work is out. The needle is used as a crochet-needle. You hook it in the dropped stitch

and push it far enough through to bring the stitch below the latch; then draw it back, catching the next cross thread above in the hook above the latch; continue to draw the needle back until a new stitch is formed; proceed in this way until all the dropped stitches are knit in. If the mending is done out of the machine, you will tie the dropped stitch with a short piece of yarn, and draw the ends inside of the web."

BY THE COURT:

2477 Q255. Does that refer to the run? A. It says mending broken stitches. I suppose it refers to a run. It says here, the needle is used as a crochet-needle. I take that to mean that he is using a pivoted latch needle, although there is nothing in this exhibit to show what he used, and takes it in his hand and uses it in essentially after the fashion of a crochet-needle, except as modified by the presence of the latch. "You hook it in the dropped stitch and push it far enough through to bring the stitch below the latch." That is a latch needle. "Then draw it back, catching the next cross thread above in the hook above the latch; continue to
2478 draw the needle back until a new stitch is formed; proceed in this way until all the dropped stitches are knit in."

If the mending is done out of the machine, you will tie the dropped stitch with a short piece of yarn, and draw the ends inside of the web.

As I recall, he showed in a circular which he issued, he showed a circular machine and the operation he describes is that the method was to catch the hook in a dropped stitch or in the last existing stitch at the end of the run, and push the needle

far enough through to bring that loop below the latch and beyond the end, free end of the latch.

Then he brought the needle back catching the next cross thread above in the hook above the latch. He then hooked the ends of the run in the latch. He says here "proceeded this way until all the dropped stitches are knit in." Just before that he said "Proceed in this way," or rather, "continue to draw the needle back until a new stitch is formed."

This method of repairing in the machine was illustrated in a later publication by Gearhart, and 2480
has been described to me at various times substantially like Mr. Hitchcock showed you here, that fabric going above the needles instead of below the needles, it went up above the needles instead of going down below them. They put the needle in the fabric in his cylinder and catch the last loop, and then twist it and turn it in there so as to draw up these stitches, they turn it until they draw up these stitches.

BY MR. HODGES:

Q256. I hand you Defendants' Exhibit A-33. What is that illustrative of? A. It is illustrative 2481
of this thing here. The operation which I assume is intended to be described, is the same as this. With Fig. 1, picture 1 shows the needle being pushed down back of the fabric beneath the cloth and the needle, in between the cloth and the needle cylinder, because it is a circular machine, this Gearhart machine, down until you catch the last loop, the needle going on through.

Then the needle being twisted around to get the latch behind this other loop, and then being pulled on so that the latch will force this down.

2482 *Frank W. Dahn. Called in Rebuttal. Direct.*

Q257. Force what down? A. Force the cross thread down into the eye of the needle, and draw it through the previous loop, making a new loop in the cross thread and causing the previous loop to make a stitch in the fabric, as shown by Fig. 4 and further in Fig. 5. With the old stitch as shown, as being in the wale and the new stitch is shown as being in the hook. That operation is the one I have understood to be described in the Gearhart book and in the Branson book. The same operation can be carried out on a flat machine. I no-
2483 tice the reference on page 23 of Exhibit A-22 to knitting of flat plane, the knitting of flat work. I suppose that was done in a circular machine by reciprocating.

Q258. I will ask you if that picture corresponds to Plaintiff's Exhibit D for Identification, if you will refer to the last page.

The Court: This will be marked Plaintiff's Exhibit 40.

Mr. Hodges: That was offered at the taking of these Gearhart depositions, because of all these publications of Gearhart, that was the first one that gave us any graphic illustration
2484 of what he was talking about. It also gave the date.

The Court: It will be Exhibit 40.

(Marked Plaintiff's Exhibit No. 40.)

By Mr. Hodges:

Q259. Go ahead. A. That this description is, of course, very fragmentary, and vague, and is interpreted by me in the light of the illustrations, of the Gearhart illustrations.

Q260. I call your attention to Defendants' Exhibit 30, which is the celebrated auto-knitter, and Defendants' Exhibit A-32 of the Gearhart Knitting Machine, dated November 1, 1921, and Defendants' Exhibit A-35, the Auto Knitter Instructions Book, copyrighted in 1920, and Defendants' Exhibit A-37, Instructions for operating the Gearhart Sock Knitting Machine, prepared by Ada Weiner in 1918, and I will ask you to refer just briefly to the description of mending the dropped stitch in the mending machine, just to say if there is a similarity there in the essentials. A. Defendants' Exhibit 2486
A-30 has a paragraph on page 16, headed "mending broken or slipped stitches," which is somewhat more voluminous than the Branson description, but has sentences which are practically identical with the Branson instructions, which I do not have before me at the moment.

In Defendants' Exhibit A-32, the instructions seem to be exactly the same as in Defendants' Exhibit A-30.

In Defendants' Exhibit A-35, there is a page of instructions, the first four lines of which are partly obscured.

BY THE COURT: 2487

Q261. Why? A. Well, in the photostat apparently there was something between them.

BY MR. HODGES:

Q262. In the part that does show, Mr. Dahn, is there something said about giving a quarter turn to the needle? A. Yes, I was just noticing that, and that means that you have, in a definite sense, four

movements, such as are referred to in the Stephens patent, as compared to his two movement cycle. That is, your go down, make a quarter turn, go back, make another quarter turn, but that order of operation may not be correct, at least, you have an up and down movement and a quarter turn to the right and a quarter turn to the left again, sometime or other—four motion cycle.

Q263. Do all of these but this one make some reference to the crochet method?

2489 The Court: You mean all the others except A-35?

Q264. Are these under discussion, using a crochet needle? A. Using a knitting needle of a machine after the method of a crochet needle, I think was the language in the Branson and in the first two Gearhart. I think that particular expression is not in this construction as far as it can be read here.

Q265. Do you understand what crocheting is? Can you show the Court? Tell just what it is, it will only take a second. A. Yes.

2490 Mr. Wooster: The complete Auto-Knitter book is Defendants' Exhibit MM, twelfth edition.

The Witness: In crocheting, a single needle is used to form or to make a chain of stitches out of the yarn, one by one, and in that method, the needle has a reciprocating movement with a partial turn, in order that the new loops may be drawn back through the previous stitch without catching the old stitch in the hook, and that is very similar to what has just been discussed in Exhibit A-35. That is a four-cycle

movement, forward and back, and to the left, in this case, and back again,—whatever the order of those operations may be.

Q266. Would that apply to all of this series of exhibits? A. So far as I have gone, yes. We come now to A-37, in which there is an instruction headed: "To pick up plain stitch," and again an instruction to use the cylinder needle which were worked similar to a crochet hook, stating that the needle is to be pushed down between the work and the cylinder, to catch the stitch and then pushed 2492 until the tongue is free and then drawn back, allowing the tongue to cross the yarn and form the stitch.

This is understood to mean just what was shown in the pictures in that other Exhibit Plaintiff's A-40, where they had to turn the needle in order to get the latch back of the runner, which is above the loop in the cylinder, as the run is going down the cylinder. There is also an instruction here, "To pick up rib stitch," which is very brief. To pick up rib stitch, catch stitch inside work, push needle upward from tongue.

BY THE COURT:

2493

Q267. Is that latch, what you call tongue? A. Yes, tongue meaning latch and "catching yarn above, at the same time draw yarn through stitch replaced on needle." I should not care to try to interpret that without some little time to study it. In Auto Knitter, Defendants' Exhibit MM. there are instructions on page 20, for picking up slipped stitches in several paragraphs. This instruction also has the language about turning the needle a quarter turn to the right, which evidently means

2494 *Frank W. Dahn. Called in Rebuttal. Direct.*

a four-cycle movement, as previously described by me.

The Court: What Exhibit is that?

The Witness: MM.

The Court: The same as A-35, Defendants' MM.

The Witness: There is a supplementary instruction on page 32 in regard to picking up ribbed stitches, much the same as that in A-37, indicating that the ribbing attachment is taken
2495 out of the machine and the rib needles are left hanging to the stitches outside of the cylinder, after which apparently the run can be repaired.

Q268. Are you familiar with embroidery? A. Yes.

Q269. Does that correspond to crocheting? A. No, not at all. In embroidery, you have the foundation fabric, speaking of my own experience, there may be other things, you thrust down through that some instrumentality, such as an eye-pointed needle, which carries the yarn or sometimes a heavy strip of material down through and as the needle comes back, the friction holds a loop of the material down
2496 below, and so on, and you form your design, forming the loops on both sides of the fabric.

Q270. Do you know what they mean by clocking? A. Yes, in hosiery. Clocking means the formation of ornamental designs usually at opposite sides of the stockings, formerly always done by a process of embroidery or something corresponding, probably generally done with a sewing needle, just sewing up a wale of the fabric and putting in a fancy colored yarn or something of that kind.

BY THE COURT:

Q271. It was considered embroidery in the first place, wasn't it? A. So it is understood in the art. Clocking is also done by drop stitches, so as to make an open work design. Recently it has been done by clients of mine on a knitting machine and quite successfully. The yarn being fed,—the clocking yarn being fed at the same time with the body yarn so as to be knitted in.

The Court: The record may show that Conway P. Coe has brought a volume bound with the British coat of arms on the top; Library of the United States at the bottom; Library of the United States Patent Office at the bottom, entitled "Specification of Inventions" and the figures 1689 at the bottom and the patents specified 168,801 to 168,900 (new series) being all British patents under the patents and design act of 1907, and it is marked as published in London in 1923, at the Patent Office sale branch, 25 Southampton Building, East Chancery Lane, W.C.2; received at the Library of the United States Patent Office, June 25, 1923, and in its proper order in this book is found the Pogson specifications which did not result in a patent, and numbered 168,817, and that particular patent is stamped as received by United States Patent Office Library on November 16, 1921, as are several of the other patents. 2498 2499

The Court: From that I assume, as is common in many English publications, the title page was sent subsequentnly in order to be used in binding. That means we have the date November 16, 1921, which was when it reached

2500 *Frank W. Dahn. Called in Rebuttal. Direct.*

the patent office. The particular purpose of sending for this book as an exhibition to the Court, was to determine whether in the drawing, Fig. 6 of the specifications of Pogson, the hook was under or above the thread represented as *h* in that figure.

Having examined this drawing in the Patent Office, I have no hesitation in saying that whilst it is not as clear in the Patent Office drawing as it is in Defendants' Exhibit SS, the recently certified
2501 copy received from London by the defendants and put in evidence, it seems perfectly clear to me, and I so find, that the thread *h* is inside and above the hook in Fig. 6 and so intended to be, just as it is more clearly shown in Defendants' Exhibit SS.

Mr. Hodges: Your Honor, that brings us to the point about that Patent Office drawing, which was never allowed to go out of the Patent Office, but this is a different print of the corresponding U. S. application, referring in it to the British patent.

The Court: We had that all out last night. That was not a publication; that wasn't any-
2502 thing that would interest anybody, so to speak. This other one would. I do not think it means working through the fabric in a pump fashion or a punch fashion necessarily in order to pick up any separate piece of thread; you have to get the hook under it. You would be working practically in a plane or tangentially,—it does not seem to me, if looked at with any degree of common sense, it means a punch fashion at all.

BY MR. HODGES:

Q273. I could not place my hand on this for the moment, but here it is. It was quoted by the other side, and I wanted to get it in.

The Court: What is it?

Mr. Hodges: The DeMarr application about the fancy work stitches.

Q274. Would you just state in a word, if you gather anything from that? A. The language in the last three lines of page 1 and the first four lines of page 2 stating that the needle is suitable for doing various kinds of fancy work stitches in fabrics, are stretched on a frame; that sounds like it refers to embroidery work, but I cannot say definitely that it does. 2504

Q275. Or possibly to clocking? A. Yes. Clocking isn't anything but embroidery.

Q276. I want to ask you if you found among the prior art patents not offered perhaps by the defendant, but hitherto cited in the exemplification in a given patent, both a sliding latch and a pivoted latch? A. This patent to Armour shows, as I conceive, in Fig. 1 a sliding latched needle and in Fig. 3 a pivoted latched needle. Other patents cited in this record are Salisbury 189,501 U. S. and Van Dyke 1,745,462. 2505

The Court: Who is this Armour? Is this the first one?

The Witness: Armour 52,256 U. S.

The Court: Showing, as joined in the invention, a pivoted latch and a sliding latched needle?

Mr. Hodges: Yes.

Q277. In the same patent? A. I wish to modify that as to the Salisbury in that it has a pivoted beard, it has a spring beard rather than a pivoted latch and also has a sliding beard opener which apparently is normal because both of them are shown in the same patent.

Q278. Was that last one something that has been cited; you have nothing before you except the cited patents? A. Yes, sir.

Q279. Does that not signify to you the fact that these two forms are shown in several different pa-
2507 tents as in Van Dyke? A. Evidently they were considered as showing several species of the same invention or constructions on which the same improvement was made in both or something of that sort.

Mr. Hodges: We offer the Armour Patent No. 52,256, the Salisbury Patent No. 189,501, and the Van Dyke Patent No. 1,745,462, all three being offered as one exhibit, being Plaintiff's Exhibit No. 41.

(Marked Plaintiff's Exhibit No. 41).

Q280. In regard to the prior art which has been
2508 offered by the defense and which you have been referring to, will you make a general statement as to the bearing of this prior art as a whole or individually on Claim 23 in suit? A. I think that a sufficient statement would be to say that taking the prior art as a whole so far as I have been apprised of it does not seem to me to anticipate the punch method whether revealed in the commercial practice or in the Stephens patent.

Q281. Do you care to make any modification in regard to your testimony as to Pogson in view of the recently acquired certified copy from the British

Patent Office offered in Defendants' Exhibit 88 which I show you here? A. Yes, I have that.

Q282. Have you one of the old printed copies? A. Yes, sir.

Q283. You may take this as the official exhibit. A. There is one thing to be said. I am satisfied that the showing of the angle in Pogson is sustained and is quite consistent with the supposition that the operator operated by the finger method and inconsistent with the operation by the punch method.

Mr. Morris: What was that?

The Witness: I said he was consistent with the supposition that the operator operated by the finger method and inconsistent with the operation by the punch method. 2510

Q284. Now, will you proceed with your answer? A. I wish to add one thing I think was omitted this morning. In demonstrating my understanding of the finger or French method I think I failed to state for the record that the hook when the needle is taken from the position here, that is to say, when it has taken a new round or rung or cross thread shall pass on over the rungs or cross threads next following the same as you go up the wale as the needle is moved in the direction of its length forward or from the butt end toward the hook end. This referring to the operation of clearing the latch. 2511

By the Court:

Q285. During what we call the forward movement the needle except in so far as it may have the loop on it is above the surface of the fabric? A. The intent would be to be above it except for one cross thread and regardless of what is shown in the illustration which we have had before us.

2512 *Frank W. Dahn. Called in Rebuttal. Direct.*

Q286. I am satisfied that that is perfectly clear that it goes under H. A. I am only saying that in the ordinary operation it is the other way. I beg leave to differ with your Honor. I think there is a mistake there.

BY THE COURT:

Q287. You think it should be down under G? A. Yes, sir.

Q288. It does not hook H in this Fig. 7. It pulls back and hooks G? A. Yes, sir. In the first copy
2513 I think it showed the end of the hook above that.

BY MR. HODGES:

Q289. Are there any other disclosures in the Pogson patent which support that view that it was operated over the surface as distinguished from close to the surface? A. Yes, sir.

BY THE COURT:

Q290. In doing a thing like the Pogson method I suppose sometimes you would get two or three of
2514 these threads together. You could not tell what you would get? A. That is the way I did it.

Q291. You can not see how to do it very well that way. You can see how it would cause trouble that way. Of course, a skilled operator, a woman who knew just how to do it could possibly do it better? A. Yes, sir. I do not recall that there is anything in here that would give you definite instructions one way or the other except as I have indicated in my previous testimony. That was the indication that I saw rather than instruction.

BY MR. HODGES:

Q292. You have looked in the Comptroller General's decision on the Pogson and Ortega Oppositions? A. I have read them, yes, sir.

Q293. You know the general purport of the decisions; what it was based on? A. It was based on certain British patents.

Q294. Patents like the Lee and the Walker? A. Walker. I think the Lee was included in the Ortega case.

Q295. Lee is the spring latch. I led you aside, I led you astray. It was the Walker which showed the ordinary hook. 2516

Q296. The question I want to ask is this: Was there any effort made after that to point out any claim and patent any refinements in the Pogson method or the Ortega method—they are substantially the same? A. Not to my knowledge.

Q297. Is it the American practice, from our point of view, would we be inclined to press for any difference if there were any? A. Surely.

CROSS EXAMINATION BY MR. MORRIS:

XQ298. Mr. Dahn, is similarity of result accomplished by two devices per se evidence of their equivalency or infringement? A. I should say it was at least prima facie evidence. 2517

XQ299. You would say that? A. Yes, sir.

XQ300. You disagree with the Circuit Court of Appeals? A. That is my opinion. If the Circuit Court of Appeals disagrees with the Supreme Court of the United States, I certainly disagree with them. I stand with the Supreme Court of the United States.

XQ301. What? A. If the Circuit Court of Appeals disagrees with the Supreme Court of the United States I am compelled to disagree with them. I do not know that they disagree with them.

XQ302. Have you any decision in which a similarity of result accomplished by two devices is per se evidence of their equivalency? A. Substantially the same results?

XQ303. I asked you is similarity of result accomplished by two devices per se evidence of their equivalency or infringement? A. It is prima facie
2519 evidence to that effect, I should say.

The Court: You started at the end. You say that the end justifies the means?

The Witness: I was just answering his question, your Honor.

Mr. Morris: He has stated the appearances in the Van Dyke patent and some of these other patents is evidence of equivalency. I am going to get him to withdraw that.

The Witness: You will not get me to do any such thing. What I have stated is a fact, and I stand by it.

2520 By Mr. Morris:

XQ304. My question once more is: Is similarity of results—let me emphasize "results"—accomplished by two devices per se evidence of equivalency or infringement? A. I should say it is prima facie evidence of equivalency. The question of infringement is something else.

XQ305. It is not an equivalent device? A. It is prima facie evidence of it.

XQ306. Does not an equivalent device infringe an earlier equivalent? A. Patent. Not if the pa-

tent had expired, for example. It depends on many things.

XQ307. Let us hold down to a patent in force now. That is what I am talking about. Still my question is: Is similarity of results accomplished by two devices per se evidence of equivalency or infringement? A. The question of infringement depends altogether on other things as well as that.

XQ308. Let us leave out infringement. Is it evidence of equivalency? A. I still say it is prima facie evidence of equivalency.

XQ309. Then the same result alone is evidence of 2522
equivalency? A. Not necessarily conclusive, but it is prima facie evidence of that.

XQ310. The same result is evidence prima facie of equivalency? A. Yes, sir, it certainly is.

XQ311. I thought that was one thing that the Patent Law did not permit, a monopoly of a result. I thought that it had to be by its means? A. Monopoly of result?

XQ312. Yes. A. I think it does, or substantially that.

XQ313. Then why do you tell me that similarity of result is prima facie evidence of equivalency? A. I still think it does. I have said that all along.

XQ314. Because you think it does? A. Yes, sir. 2523

XQ315. Why do you think so? A. Because of my past experience for the past 25 years, experience in the Patent Office and patent work.

XQ316. And what case can you produce upon which to predicate your conclusion that if I accomplish a result by one device and then you accomplish a result by another device then you can come into Court regardless of your means, of the functioning of your means, and have a prima facie case of infringement? A. I would not come into

Court on mere evidence unless I had studied it and saw that it was sufficient evidence.

XQ317. Mr. Dahn, I am going to hold you right to this until you answer my question. A. I have answered it several times, Mr. Morris, I will be glad to answer it as many times as you put it.

XQ318. I want to ask you why you do that until you withdraw your answer with respect to the Van Dyke and the other patents which you have put in the record here. I believe that you will want to retract that. I am going to ask you now
2525 about nothing except similarity of results of two devices. I am asking you that if I have two devices which perform the same results whether it is in itself no evidence whatsoever of equivalency or infringement? A. I have answered several times and I say it is evidence of equivalency prima facie. It may not be conclusive.

BY THE COURT:

XQ319. You mean it is some evidence? A. Yes, sir.

BY MR. MORRIS:

2526

XQ320. Suppose the results are obtained by different means, is there then any evidence of equivalency? A. If they are obtained by the two devices and the two devices are duplicates in their results there would be a duplication. Perhaps I can state it better this way: If they are obtained by the same two devices then they will be duplication, that is to say, if they were obtained by similar devices they would be duplicates. If they are obtained by different means it may or may not be evidences or evidence of equivalency.

XQ321. How do you define equivalency? A. I do not know that I would care to define equivalency. I will define equivalents.

XQ322. All right. A. An equivalent is a thing that does substantially the same thing in substantially the same way. "Macon vs. George".

XQ323. Is equivalency determined by mechanical equivalency or functional equivalency; do you know the difference between mechanical equivalency and functional equivalency? A. Yes, sir. I might have some trouble in expressing it, but I certainly know it. You are asking a rather philo- 2528
sophical question.

XQ324. You are an expert, you have told us a lot of things about whether the sliding latch is the equivalent of the pivoted latch. Since you have made all of those distinctions, I am wondering why you had the temerity to do that. A. Well, I did that because of my five and a half years' experience with the machine element division of the Patent Office where the question of equivalency is the important question to be decided. I did it partly because of that and partly because of my 25 years' experience in patent work.

As to the philosophy of it I should say that func- 2529
tional equivalency is the important thing. That is my opinion.

XQ325. Is the important thing? A. I should say so.

XQ326. Mechanical equivalency is not an element? A. We decided those things in my practice by the rule of thumb, or common sense, and not by philosophy.

XQ327. And not by law? A. I beg to differ with you there. We decided them always in accordance with the law. The law is common sense.

XQ328. Oh, I see. Then your decision and your answers are based not only upon practice but upon the principles established by the Courts defining and determining how the thing shall be determined as to when a device is an equivalent of another? A. Undoubtedly that is the way.

XQ329. Undoubtedly? A. Yes, sir, on common sense and the rules of law. Also upon past experience.

XQ320. What part does mechanical equivalency further play in determining whether one device is
2531 an equivalent of another? A. I am not prepared to philosophize on this thing.

XQ321. I am not philosophizing. I am asking you for a fact: Would it surprise you to learn that equivalency is determined by the mechanical equivalency and not by functional equivalency? A. Yes. That is not a fact.

XQ322. Will it surprise you to learn that the performance by device of the same function as the device of the patent in suit does not mean that that alone constitutes infringement, but it must also be the mechanical equivalent, and perform the mechanical equivalence in substantially the same way?
2532 A. Even if I saw the particular cases to that effect I would not be convinced.

XQ323. I cite you to 107 U. S. 537 and 178 Fed. 817. A. I still would not change my mind.

XQ324. That does not have any effect upon you? A. I have read all the decisions of the Supreme Court in patent cases and I have often tried to harmonize them sometimes without altogether getting a perfect result. Probably I can show you another decision that might modify that a little.

XQ325. You can not explain to me the difference between a functional and mechanical equivalency?

A. I certainly would not try to today. I probably could all right.

XQ326. In determining the question of an infringement of a patent or the equivalency of two devices, is it necessary to look at the mode of operation at all? A. Certainly.

XQ327. What else do you look at in determining the question of equivalency? A. Why, the prior art and the scope of the patent in question.

XQ328. Don't you look at the means by which the result is obtained? A. You presuppose that, that before you do that you have previously studied 2534
all that as a basis for your further investigation.

XQ329. Will you turn to Paragraph 4, I mean Fig. 4 of the patent in suit? A. All right.

XQ330. What do you find there with regard to the direction or movement of the needle in Fig. 5 with relation to the thread B? A. I do not believe that taking Fig. 4 by itself that you could see anything as to the direction of movement.

XQ331. Then the direction of the movement of your needle may as well be, as far as it is disclosed in Fig. 4, directly towards Fig. 4 as well as towards thread B? A. Unless they have an arrow there you have to turn to the specifications to in- 2535
struct you as to that.

XQ332. Let us turn to the specifications to see what they tell us about the direction or movement of the needle. Will you turn to the proper line and read it to me? A. Take line 87:

> "The operator at first inserts the magnetized hook 1 through the last loop *a* of the ravel or run and beneath the next thread *b*."

That is shown on page 2 of the Stelos patent, lines 87 to 90, inclusive.

2536 *Frank W. Dahn. Called in Rebuttal. Cross.*

XQ333. Does that indicate any direction of movement? A. (Reading):

> "The needle is then slid forward until the loop *a* slides over the free end of the latch or bridge 4."

XQ334. Is that directly towards *b* or away from it, turn back to Fig. 4 or Fig. 6, although *b* and *b* are different in Fig. 4 and Fig. 6. We will stick to Fig. 4. A. It instructs us at least as the needle
2537 is moved towards the hook end and not towards the handle end.

XQ335. It is moved towards the pointed end, the hook end on this first movement? A. It is moving underneath the thread *b* and it is moving in the direction of its length toward that end of the needle which is the hook end and not towards the handle end.

XQ336. In Fig. 4 the handle is moved through the loop in which it is inserted towards *b* or away from it? A. It is from the loop *a* it is moved in the direction to carry it underneath the cross-thread *b*.

2538 XQ337. It is moved towards or away from *b*? A. The first movement is towards *b*.

XQ338. It is what? A. It is first moved towards *b*.

XQ339. The first part of the movement is towards *b* until it goes underneath. Then it is away.

Mr. Morris: If your Honor please, there are two witnesses that Mr. Wooster would like to put on here and ask one or two questions each if we can put them on out of order, and then we can take up with Mr. Dahn later on.

Mr. Gilligan: We have three plaintiff's exhibits which were offered in Clearfield in connection with the deposition, stockings and two books, which we would now like to present.

(Stockings marked Plaintiff's Exhibit No. 42.)

Instruction book for the Gearhart Knitting Machine, copyrighted 1923, and book dated 1926-1927.

(Marked Plaintiff's Exhibit No. 43.)

The next is a knitting manual of instructions and sales of the Clearfield Knitting Machine 2540
Company, copyright 1927.

(Marked Plaintiff's Exhibit 44.)

BY MR. MORRIS:

XQ340. What is the instrument which I now hand you? A. I am not an engineer and my education is mostly—

XQ341. It is a protractor, and as I understand it, an instrument for measuring and laying off angles; it is an instrument by which that can be done, is it not? A. As I say, I am not an engineer. My college education is mainly on chemical lines.

XQ342. Then would you ascertain for me the 2541
number of degrees that the needle is shown out of alignment with the run in Pogson? A. That is rather a matter of guessing, in direction with the run.

XQ343. You would not understand three, four, five, six, seven and eight of Pogson indicated a run in Fig. 1? A. I should assume it is probably intended that the direction of the run is in the direction of the length of the sheet of paper.

XQ344. Do not the rungs of the ladder show the direction of the run? A. They are indications, yes.

XQ345. They are at right angles with the run, are they not, running crosswise of the length of the run? A. Substantially, yes.

XQ346. Won't you measure for me the number of degrees that the needle is shown operating laterally out of alignment in the run in Mr. Pogson's publication? A. If that run is correctly represented, as you suggest,—

2543 XQ347. We will assume so, and no more so than in Mr. Stephens. Figure 3 is the insertion, not the method of operation.

The Court: You do not pay any attention to that then?

Mr. Morris: No, but 4, 5, 6, 7 and 8.

The Witness: Are 20 degrees, perhaps, a little bit more.

The Court: Oh, yes, it is more than 20 degrees, isn't it?

By Mr. Morris:

2544 XQ348. 20 degrees, approximately, is what I found it to be, or rather Mr. Fearing found it to be about, if it is more or less than that, I am not concerned.

The Court: All right, call it 20 degrees.

By Mr. Morris:

XQ349. It is 20 degrees laterally out of alignment with the run, assuming that the run is indicated by the parallel lines indicative of the rungs of the ladder in Fig. 1—

The Court: Do you mean the rungs are at right angles—

Mr. Morris: Yes, I meant right angles.

The Witness: I should say laterally is as good a word as I have in mind, yes.

BY MR. MORRIS:

XQ350. Do you suppose that the draftsman for Mr. Pogson happened to lay his needle down on the fabric when he was using the needle there, or do you find something in one patent or the other different, that is to say, do you find that the draftsman happened to lay his needle down in the drawing in the Stephens patent and not in the Pogson? 2546
A. I should think it is reasonable to assume that this is a plane of a run with the needle approximately as held—I should say this needle was in plane with the paper, that is the best guess I can make.

The Court: How much it is off the central line of the run to the right?

BY MR. MORRIS:

2547
XQ351. That I had finished with. My question now was based upon my recollection of a witness who testified with regard to the figures 4, 5 and 6 in the Stephens patent in suit. I recall there that the witness said that he assumed that the needle was laid down upon the fabric in this illustration or in these illustrations, and I am wondering whether there is any more basis for that in the Stephens than in the Pogson.

The Witness: I cannot be certain about these things but it looks to me that his needle

is in the plane of the paper, and as you said, about 20 degrees.

XQ352. Laterally out of alignment? A. I think laterally out of alignment is a fair definition.

XQ353. You are speaking of the Pogson needle? A. Yes.

XQ354. Now, then, won't you open to the drawings of the Stephens patent in suit, do you find the same thing true of the Stephens patent in suit except the extent to which the needle is laterally
2549 out of alignment with the run? A. I have a different impression of it, but I cannot give a very good reason for it.

XQ355. That is because you had seen the Stephens commercial method in operation? A. As I say, I cannot give a good reason for it. It may have something to do with it. It certainly extends for some distance directly below the rung *b*.

XQ356. It extends some distance below or beyond it? A. I should say below.

XQ357. Why below? A. That is the way it looks to me.

XQ358. Why does it so look to you? A. I can-
2550 not answer that; it seems that way to me.

XQ359. You are an expert on patents and patent drawings, are you not? See if you cannot tell me why it is, must we not assume that is in the plane of the paper the same as Pogson is? A. Not necessarily. It is a matter of impression. I may be wrong, but that is the way it looks to me.

XQ360. You are basing your answer upon an impression that is without foundation? A. I would not say that.

XQ361. Then what is the foundation? A. As I said, I am unable to answer that.

XQ362. All right. A. My impression may be wrong.

XQ363. Just one more question on that? You found nothing in Figs. 4, 5 and 6 of Stephens to show that the needle, as there illustrated, is outside the plane of the fabric? A. Why, yes.

XQ364. Tell me what it is. A. There is something in Figure 5, where there is a pretty definite indication that the needle is outside the plane of the fabric, that is, the rung *b* is bent down in Fig. 5.

XQ365. It is bent down in Fig. 5? A. That is my impression of it. It is just under the latch and it is forced down out of the plane of the paper by the latch. 2552

XQ366. To what extent is it out of the plane of the fabric in Fig. 5? A. I could not say just how far, but it is some little distance and that corresponds to the operation, as I have seen it, in the Stelos patent.

XQ367. Is there any turn of the needle in Fig. 5 on its horizontal axis,—in rotation on its horizontal axis? A. On its longitudinal axis, do you mean?

XQ368. On its longitudinal axis, I mean. A. Yes. 2553

XQ369. There is? To what extent is there rotation of the needle in Stephens Fig. 5 on its longitudinal axis? A. It is turned, I should say, somewhat less than 90 degrees from the position shown in Fig. 4.

XQ370. Now, then, I exhibit to you Defendants' Exhibit NN, with that turned somewhat less than 90 degrees; am I holding that needle approximately in the plane of the fabric? A. No, I hardly think so.

2554 *Frank W. Dahn. Called in Rebuttal. Cross.*

XQ371. To what extent is it not? A. There is a point somewhere between the—approximately—not approximately out, I should think you are a little above the plane.

XQ372. Slightly. Measured by degrees, it would be how much? A. It would be a matter of guesswork.

XQ373. Probably ten? A. Oh, five or ten.

XQ374. There is a downward bending of the rung of the ladder immediately in advance of the loop through which the needle now is, is there not?

2555 A. Yes.

XQ375. All right. Have you any other reasons to substantiate the impression which you recently referred to that the needle in Mr. Stephens patent is substantially outside the plane of the fabric, as there illustrated? A. Yes, that impression with regard to Fig. 5 is substantiated by the specification, which says in a number of places that the latch does force the thread to be looped into the hook, or language to that effect.

XQ376. And that is not true if that needle is held out rotating on its longitudinal axis? I show you now Defendants' Exhibit NN, the harp, and I ask you as to whether there is or is not a

2556 pressure upon the thread or rung of the ladder immediately in advance of the loop, although that needle is held approximately in the plane of the fabric? I show you that the pressure is there. A. It is very slight and the nearer you get to the plane, the less bending in the run.

XQ377. Provided what? The rotation upon the longitudinal axis of the needle is nil? A. I am not clear on that. I should say, on further consideration, that it is not necessarily dependent upon that.

XQ378. Upon what then? A. Well, you can turn the needle on its longitudinal axis so as to bend the yarn down, but of course your needle was in a very different position from that shown in Fig. 5 here. You turned your needle to the left, where this is turned to the right.

XQ379. All right, I will turn it to the right. If by this you meant the needle in the drawings of the Stephens patent in suit? A. Fig. 5.

XQ380. Fig. 5. A. It is in regular position for the punch method now.

XQ381. I am retracting, I am not advancing; I am through the loop; isn't there a distinct curvature from the snap of the needle produced by the pressure or force of the latch of the plain latch needle which I am using? A. There is a distinct curvature. 2558

XQ382. Is the thread within the hook? A. No.

XQ383. The latch, however, has closed, has it not? A. The latch is in closed position, yes.

XQ384. Is in closed position, all right. Have you any other reasons to advance as to why you have an impression that the needle is not in the plane of the paper or fabric in Stephens to the same extent as in Mr. Pogson's drawings? A. Aside from the question of finding some other statements in the specification, I should say no, but as you are fond of decisions, these things are somewhat determined, as Judge Hough said, by the crude standards of common sense, which decision I cannot cite to you, but I will find it. 2559

XQ385. What are the standards of common sense based on, can you tell? A. They are based on experience and knowing how draftsmen do things.

XQ386. Is this a *post hoc* impression because you have seen the Stelos commercial method in use? A.

2560 *Frank W. Dahn. Called in Rebuttal. Cross.*

Excepting for the Latinism, which I do not qualify at all on—

XQ387. Withdraw the question. Is this an impression that arises because you have seen the Stelos commercial method in operation or is it an impression that you would have gained had you seen the Stephens patent and drawings in suit before you had seen the Stelos commercial method in operation? A. My idea is if I had looked at those drawings and read the specification, I should have had the same impression that I have now, that
2561 this needle in Figs. 5 and 6, considering the description of those figures, has been turned aside to show the position of the various parts of those portions of the courses which are in question.

XQ388. Is it any more necessary to turn it aside in Mr. Stephens' than in Mr. Pogson's? A. That is a question of the individual ideas of the draftsman, and in this case, where the man showed the needle, not merely by single lines as in Pogson, but —I cannot think of the right word.

BY THE COURT:

Q389. Pictorially? A. Pictorially, yes, sir. It
2562 would be more necessary. If you are going to show what these pictures say.

Q390. You think the figures are more illustrative of the operation of the needle than they are of the method, is that what you are trying to say? A. Yes, sir, that is considering the attempt to show where the yarns are at given moments. It would be perfectly competent for a draftsman, and a draftsman could very well have shown moving pictures of the operation, but he did not do it.

BY MR. MORRIS:

XQ391. Could not Mr. Pogson do it? A. Certainly, and Mr. Pogson came a lot nearer doing it than Mr. Stephens' draftsman.

XQ392. You are an expert in chemicals but not in mechanisms, as I understand? A. I never said I was an expert in anything. Some people do me the compliment of calling me an expert in knitting.

XQ393. Do you know anything about drawings? A. I am pretty good at reading drawings but not in making them.

2564

XQ394. Is there a well recognized method of showing on elevation by drawings, if it is so desired? A. Oh, yes, I think so.

XQ395. There is. Is that method here employed? A. I do not think these drawings, any of them, are elevations.

XQ396. None of them show any elevation of the needle? A. I should not call them so. It depends on what you mean. This needle may have been conceived in contrast with Figs. 4, 5 and 6; may have been conceived in Fig. 1 and some of the others as standing on end, and this figure might be seen in plan view, but my judgment is as to all these figures, without looking at the descriptions, that all these things are laid flat on the desk and are plan views.

2565

XQ397. They are plan views in Mr. Stephens', as I understand? A. That would be my impression.

XQ398. The same thing in Pogson? A. Probably so, yes.

BY THE COURT:

XQ399. Like one of those display cards that you occasionally see in hardware shops where you see

2566 a lot of the implements made by one maker laid flat on the board, is that what you mean? A. That is my impression, yes.

By Mr. Morris:

XQ400. Then we may leave this line of questioning on these drawings with the understanding that it is your understanding that the Pogson needle and the Stephens needle, as disclosed in the respective drawings, are each lying flat upon a board or upon a desk? A. No, I have not intended to
2567 say just that. I am not good at definitions, but if I may explain my impressions of Figs, 4, 5 and 6, illustrations of the drawings, that these needles were lying flat,—

XQ401. I have not asked you about a single figure in Stephens, except 4, 5 and 6. A. You were asking about my general impression of these needles; as to the others, I would say these fabrics are lying flat on a drawing board—maybe not flat on a drawing board, maybe they are held up, but the representation of the needles, of the projection of the needle which was held up, out of the plane of the fabric and not on a drawing board.

2568 XQ402. And now I have taken you all over that. I thought you had come away from that. You are dealing with this as an impression. Have you indicated anything to me as a basis for that? Have you indicated anything to me as a reason for that impression existing except as a figment of the imagination? A. In Fig. 5 I said that rung b seems to be represented as bending downward. My impression of the latch is that you would get that mode of action as described in the specification.

XQ403. We went through all of that on Defendants' Exhibit NN and showed that that could be

equally true with the fabric line in the plane of the needle, that is to say, with that in close plane to the fabric? A. You mean the needle, don't you?

XQ404. Yes, with the needle in the plane of the fabric or close to it. A. I don't admit that we had the needle in the plane of the fabric. We did not.

XQ405. About five degrees out of the plane of the fabric? A. There is a zone somewhere in there where it would not be in the plane of the fabric but would be up away from the plane of the fabric. I still say that it would be substantially out of the plane of the fabric. That is my idea based upon my experience of some 25 years. 2570

XQ406. What is a patent? A. There are numerous definitions. I would not care to give any particular one.

XQ407. Select the one you most prefer and let us have that. I don't care what one you give us. A. I refuse to do that. I have no definition that I would care to give. They are well known. It is stated in the statute.

XQ408. Oh, yes. What must there be in a patent to constitute a legal patent? I refer you to what is said on that in Section 4888 of the Revised Statutes. A. I should say this: It is a clear, concise and exact description of an invention. I do not limit myself to that. I would probably say something else if the necessity indicated in order to be specific. 2571

XQ409. Will you turn to the description of the Stephens patent in suit and give me in the language of the specifications a clear, concise and exact description of the invention as required by Section 4888 of the Revised Statute? A. That would incorporate the entire specification.

2572 *Frank W. Dahn. Called in Rebuttal. Cross.*

By Mr. Morris:

XQ411. What are the words of Section 4888 of the Revised Statute as to what a patent shall be in its definition? A. As I recall, it is clear, concise and exact.

XQ413. Go ahead and tell us what you find in the specifications which to you discloses the pump method of the operation of the Stelos needle at a substantial elevation from the plane of the fabric? A. I start with the lines 7 to 14 on page 1:

2573 "In other methods, the fabric is stretched over the finger tip, making it difficult to insert the hook beneath the thread."

XQ414. Just a moment. I do not find that place. Where is it? A. That is page 1.

XQ415. Page 1, line 15? A. No, sir, line 7.

XQ416. Line 7 to where ? A. Sir?

XQ417. Line 7 to where; where does the quotation go to? A. It is line 7 to line 14. I did not read the other lines that make up the remainder of it.

XQ418. Line 7 to line 14. Go ahead.

2574 The Court: Let me get that. Line 7 to line 14. All right.

XQ419. Will you read that? A. (Reading:)

"This objection is obviated in the present invention by stretching the fabric over a porcelain dish, allowing sufficient depth for the free use of a needle."

That is the line I had reference to that brings it down to line 14.

XQ420. With the other sentence above it? A. Yes, sir.

BY THE COURT:

Q421. That means porcelain dish which allows sufficient space for the needle to go beneath it? Is that your point there? A. Undoubtedly I should think so. It seems to me to indicate a three-dimensional operation. I think that is the right term. Instead of a single-dimensional operation.

Q422. In other words, going from plane geometry to solid geometry? A. Yes, sir, solid geometry, where you would have three dimensions. 2576

Q423. Yes, that is what I had in mind.

BY MR. MORRIS:

XQ424. You say that that presupposes a punch method? A. Yes, sir, I think it clearly demonstrates a punch method.

XQ425. Is not the free use of a needle in a dish only slightly deeper than the diameter of the hook sufficient to correspond to and meet that requirement? A. I think the possible use of some other method might not be beyond the limits of the imagination. This is the only reasonable construction in my opinion that can be placed upon it. I do believe that this thing is intended to point in that direction. 2577

XQ426. To point in that direction? Is that in such clear, exact and concise terms as to disclose that the depth of the proposed porcelain dish had to be any greater than was necessary to provide for the free use of the needle in operating in the plane of the fabric? A. I would say that taking that thing by itself it might not be sufficient.

2578 *Frank W. Dahn. Called in Rebuttal. Cross.*

XQ427. It would have to be supplemented by another thing? A. It must be taken with the other things in the description.

XQ428. Where do you find any other things in the description that you believe discloses the method in question? A. Lines 44 to 48 on page 1:

> "With my invention and its method of use, the latch reaches for and grasps the thread to be looped, forces it into the hook and the latch is then tightly closed by the loop already on the needle."

2579

XQ429. Is that in such full, clear, concise and exact terms as to disclose anything more than was illustrated by the use of the needle in Defendants' Exhibit NN when we found that when the needle was operated only about five degrees outside of the plane of the fabric that the run, the thread or run or ladder immediately in advance of the loop was bent down and forced into the hook in the manner there described in lines 44 to 48, inclusive? A. Just a moment. Will you read the question?

(XQ429 read.) A. Will you read that question again? I don't believe I understand it yet.

2580 XQ430. I will state it again for you. Didn't we illustrate a few moments ago that the thread immediately in advance of the loop through which the needle was inserted was bent down and forced into the hook by the action of the latch, although the needle was then approximately five degrees only out of the plane of the fabric? A. I did not say that the needle was only five degrees out of the plane of the fabric. I said it was approximately five or more degrees out of the zone which I described as the plane of the fabric.

In the finger method the needle is not in the plane of the fabric, that would be impossible. It is just out of it. It is substantially in the plane of the fabric. It is not really in the actual plane of the fabric.

The position of the needle as you illustrated it was not inconsistent with the punch method, with the use of the punch method.

XQ431. What is the zone of demarkation between the finger method and the punch method as you describe it? A. Well, the zone of demarkation lies between substantially out of the plane of the 2582
fabric and substantially in the plane of the fabric. Those last words are slightly misdescriptive, because the needle could not be that way. The needle could not be in the plane of the fabric, but close to it.

That is about as close as I can get to it in a general description.

XQ432. In the finger method, that is in the plane of the fabric, is it not? A. I did not say so. I don't think so. It is close to it.

XQ433. It may run how many degrees above? What might be the angle of incidence in the finger method? A. It is an indefinite thing.

XQ434. Let's turn to anything else that you 2583
find in this disclosure that would bring to the mind of a person skilled in the art, however high, in the prior art, prior to the Stephens' disclosure? What else do you find? A. I will read you this:

> "With my invention and its method of use, the latch reaches for and grasps the thread to be looped, forces it into the hook and the latch is then tightly closed by the loop already on the needle."

XQ435. What does that mean? A. I was going to say that in the finger method the latch does not reach for and grasp the thread to be looped as in this extract just read.

I now turn to lines 49 to 54:

XQ436. What page? A. Page 1.

XQ437. Go ahead. A. (Reading:)

> "Other needles and their method of use require four separate motions to complete one purpose—two forward and two back. My invention and its method of use requires but
2585 one forward and one backward motion to accomplish the same purpose."

In the drawing which I conceive to illustrate the method in the Pogson patent there are actually four movements more or less closely in a right line backwards and forwards. There is a difference there that is marked.

XQ438. Are you sure you made four movements in the Mexican finger method as you illustrated it today? Did you do that as you made these runs in Court here today? A. Four movements.

XQ439. The four movements of the Mexican
2586 finger method as you illustrated it today? A. I should prefer to call that the French method. That is the proper name for it, in my opinion, from my experience.

XQ440. I don't know what you mean when you say "French finger method". What do you mean by that? A. That is the term that I have always heard used by those skilled in the art.

XQ441. Do you have any foundation for it? If so, will you please state what your foundation is? A. Yes, I have a foundation for that statement.

XQ442. Will you state it? A. As a matter of Court record in this country the first latch needle seems to have been invented in France as designated in a patent in 1806 and in a book in 1831. A latch needle is a particularly suited instrument for that purpose. I use the term "latch" in its broader sense.

Further, I know that French women are particularly skilled in fine needle work.

Further I know as a matter of information acquired from many years of experience over some 25 years that the French early in the game invented 2588
many knitting machines and their method of use and so forth. Those things to my mind are very strong evidence of calling this the French or finger method.

As to the particular justification for this specification, all I know I have heard it referred to as the French method or the finger method. I think we might as well call it that as anything else. It seems to have the weight of authority.

The fact that one Mexican woman used the French method would not justify calling it the Mexican method when it has been called the French method or finger method for so many years.

2589

It seems very probable that this method was originated in France. I am accustomed to calling it the French or finger method and I prefer to continue to do so.

XQ443. Let us call it the finger method and we will be able to understand each other. Will you just show me the four movements of the finger method which you illustrated today? A. As nearly as I can on this.

XQ444. Can you do it on the shorter ones? It does not make any difference to me which one you

do it on. A. It does matter so much because the threads are elastic.

XQ445. You have now inserted the hook beneath one rung of the ladder. A. Yes. I am far from adept in doing this.

XQ446. I want you to give me the four movements of the finger method, please. A. Let me get started and I will.

XQ447. Get your loop first and then we will begin talking. A. All right. Now I have my loop and you can go ahead.

2591 XQ448. You have made a loop. What do you do next in the finger method? A. You open the latch by forcing the needle forward.

XQ449. In under one of the rungs of the ladder in advance of the loop? A. Wait a minute.

XQ450. This is the way you illustrated it this morning. A. Wait a minute. This is how you open the latch. By forcing the needle over the rungs of the last loop.

XQ451. That is the finger method? A. That is the specific thing that I know as the finger method. Of course it is difficult to illustrate it here on this particular thing because I am not so adept. This is the first thing that you do in the

2592 finger method.

XQ452. What is your next movement? This is movement No. 1, is it not? A. Yes, sir, this is movement No. 1.

XQ453. Your next movement is what? A. So as to get the next cross thread into the hook, which will come in now because it is under and forward, we are coming back.

XQ454. You have retracted your needle to the extent of the distance between the space of the threads of the run in the ladder, have you not? A. Yes.

XQ455. Then you have had two movements already, have you not, in through the loop forward over the rung of the ladder in advance of the loop and not under any of these rungs? A. Yes, sir.

XQ456. You did that to open the latch of your needle? A. Yes.

XQ457. Then you retracted or pulled your needle back until the outside end of the hook of your needle was between the loop of the next rung of the ladder in advance of the loop, did you not? A. I think so.

XQ458. You have had now two movements, have you not? A. That is right. 2594

XQ459. Your next movement is to advance the needle under the rung of the ladder immediately in advance of the loop or over the other rungs of the ladder until the thread of the loop has passed over the end of the latch in its fully opened position? A. Yes, sir.

XQ460. Those are three movements? A. I think you have counted it right.

XQ461. What is the next movement? A. Back to draw your new loop.

XQ462. To draw the thread which was in advance of the loop when you began making the operation through that loop and to form the new loop? A. That is four. 2595

XQ463. That is four? A. Yes, sir.

XQ464. Mr. Pogson has the finger method, has he not? It is the only possible finger movement? A. He has a good illustration of the finger movement.

XQ465. You read lines 49 to 54? A. Yes, sir. I read lines 49 to 54 of Stephens.

XQ466. You did that just a moment ago? A. That is correct.

2596 *Frank W. Dahn. Called in Rebuttal. Cross.*

XQ467. Take Mr. Pogson, won't you, take the patent and point out to me in his drawings, in his description and in his claim, anywhere within the four corners of the patent any method that bears any relation whatsoever to what you have just illustrated as the finger method? A. Just a moment.

XQ468. Is the manner of use as described in his patent beginning on page 2, lines 26, 27 and 28 and in fact on down to line 81 on that page? A. I will see. In, taking Fig. 5 for instance, that
2597 illustrates the forward movement through the loop.

XQ469. That movement begins in Fig. 4, does it not? A. Yes, in Fig. 4.

XQ470. And continues to the end of the forward movement in Fig. 6? A. No.

XQ471. And then there is one backward movement which ends in Fig. 7? A. No, that is the first one. I still contend that Fig. 6 is not satisfactory. It is not described and it appears in the copy of the picture before me to be different from that.

XQ472. Let us take the exhibit. A. The end of the hook is over yarn h.

2598 The Court: I looked over the book from Washington and I would state that it was entirely underneath the line h as shown here. Somebody else may disagree with me. That is what I found out as shown on Exhibit SS.

XQ473. Might I ask you one more question? A. Certainly.

XQ474. That operation is discussed in the lines to which I have just referred. Will you state how many forward movements and how many back-

ward movements there are in the Pogson method? A. Will you state that question again?

(XQ474. read) A. The first movement is designated in the lines beginning with line 36:

"The needle thus engaged is then moved to the position shown in Fig. 4 to enable the forward hook end to be directed towards the adjacent piece of thread or yarn *g*."

XQ475. You start there, the needle is ready for operation? The first movement is the insertion which we have not been dealing with in any other method. Will you show me how many movements are disclosed in Pogson from there on after the insertion of the needle and its movement to the operating position? A. Yes. 2600

"to enable the forward hook end to be directed towards the adjacent piece of thread or yarn *g* under which the hook is passed as shown in Fig. 5 and moved forwardly until the latch *b* passed the loop *f*."

That is according to the movement over the upper end of the drawings, the issued drawings. If they had had that run out in an ordinary single wale or run it must be longitudinal of that run. 2601

"The direction of movement of the needle *a* is then reversed with the result that the latch is moved to the closed position by contact with the loop *f* and the piece of thread or yarn *g* is enclosed between the hook and the latch and passed under the loop *f* and formed into a loop g^1 as shown in Fig. 7. In passing the loop g^1 under the loop *f*, the latter passes out of en-

gagement with the needle and the latter is then free to be moved forwardly over the loop *f* for engagement with a piece of thread or yarn *h* as shown in Fig. 8."

I do not see at the moment how that latch goes over the threads *g* and *f*. I do not think it can do it.

XQ476. How the latch goes over the threads *g* and *f*? A. Into the position shown in Fig. 8 by such movement.

2603 XQ477. You have the harp there. I think we can illustrate that for you if you do not understand that clearly. A. All right, I will be glad for you to do so.

XQ478. This is advancing and it is one continuous motion until the loop goes behind the latch, is it not? A. That is the position of Fig. 8.

XQ479. I am asking you about the disclosure on page 2 of Pogson, beginning at line 28 and ending at line 81? A. What is the question?

XQ480. I am asking you about the number of movements required by Pogson in his method there in his clear, concise, full and exact disclosure? A. You are saying it is that. I do not say that. So
2604 far as I have seen, there are only two movements described in that specification.

XQ481. Then Mr. Pogson has not the finger method which you ascribed to him, when you described it to me, and with which you have been using him synonymously yesterday and today? A. I have assumed all along that he shows the finger movement. I am not convinced yet that he does not or did not intend to show something of that kind.

XQ482. What is it you think that he intends to show, something of that kind which he does not

disclose and you are assuming that Mr. Stephens discloses, intended something different from Pogson which he does not disclose when their disclosures are substantially 100 per cent in accord? A. This part of Fig. 8. That end of the hook as near as I can see appears to be over the yarn in Fig. 8 because the two lines of yarn *l* cross the shank of the needle and they don't cross the end of the hook.

The latch could not be in that position unless it was advanced to clear it and then brought on back over it.

XQ483. Sometimes in interpreting drawings we look at the specifications. A. Yes, we do. 2606

XQ484. When you told me that there were any such motions or incomprehensible suggestions in the drawings of Pogson as you have tried to use—I will not say that you have purposely endeavored to distort them; what is the word I want—here in a drawing that is so clear as the one in Fig. 8? A. It may be clear to you for your purposes. It is clear in relation to that specification.

XQ485. How many movements to form one loop does Mr. Pogson disclose in his perfectly full, clear, concise and exact description of this method? A. You are saying that. I have said that the description only showed two movements, as far as I can see. 2607

XQ486. One was from him. We will leave out the question of the downward movement. That was away from you and this is going towards the cloth or fabric and then back above the thread of the loop, was it not? A. It certainly was.

(Adjourned to April 2nd, 1931; at ten-thirty o'clock a. m.)

2608 *Frank W. Dahn. Called in Rebuttal. Cross.*

TRIAL RESUMED

FRANK W. DAHN, resumed:

CROSS EXAMINATION BY MR. MORRIS: (Continued)

XQ487. The public is entirely, free, Mr. Dahn, is it not, to use the Pogson needle? A. As far as I am aware, yes. I do not know of any U. S. Patent on it. You mean the public in this country, I suppose?

2609 XQ488. So far as Pogson is concerned, at least, the needle and its use belongs to the public, does it not? Of course you can answer that promptly, can't you, Mr. Dahn? A. If the method of use is what I consider it to be, yes.

Mr. Morris: Mr. Stenographer, will you please read the question?

(XQ488. read) A. Not necessarily every method of use, no..

XQ489. All right, let us confine our question to the Pogson needle, unless there are some patents underlying Pogson covering the latch needle then,

2610 the public is free to make use and vend that needle, is it not? A. Broadly, yes, of course.

XQ490. The Pogson needle has been known and disclosed since when? I mean the pivoted latched needle for knitting purposes. A. The pivoted latched needle?

XQ491. A pivoted latched needle for use for knitting purposes has been known since when? A. 1806, to the best of my knowledge and belief.

XQ492. 1806. A. I would be glad to give you the Court citation for that, if you wish.

XQ493. The present record shows that in 1847 it was old, does it not—the Carey citation? A. Hibbard or Hilbert, I think, is the earliest record.

XQ494. Possibly the illustrations are a little clearer in Carey, if I recall. I am not concerned about that date particularly, but it has been known since that time? A. This is a good illustration of a pivoted latched needle in 1849.

The Court: He said 1847, but that is all right. The precise date is not necessary, it is so far back.

2612

BY MR. MORRIS:

XQ495. Was the public, in its method of use of the old latched needle for knitting purposes or repair purposes confined to the exact number of degrees out of lateral alignment with the run, shown by Pogson? A. For knitting purposes? That question does not make sense.

XQ496. You say that question does not make sense? A. For knitting purposes, it does not.

XQ497. Fine. Then just define for me "knitting," won't you? A. Well, hand knitting—

XQ498. No, no, no; won't you answer my question? A. I will try to. 2613

XQ499. I simply asked you to define knitting, that is my question. A. If I can. As a very tentative definition, I would say that knitting is a method—

XQ500. It is sometimes a little difficult to create out of one's mind a definition that is all comprehensive? A. More than a little.

XQ501. Well then let me give you one. A. Let us take the one out of the classification that Mr. Wooster suggested yesterday.

2614 *Frank W. Dahn. Called in Rebuttal. Cross.*

XQ502. I find Webster's International Dictionary gives among its definitions of knitting, this:

> "To form, as a textile fabric by the interlacing of yarn or thread in a series of connected loops by means of needles either by hand or by machinery."

Do you accept Mr. Webster's definition? A. Not at all. That would include crocheting and other things.

2615 By Mr. Morris:

XQ503. That is not the proper definition of knitting? A. No.

XQ504. Then you may give me the correct one, please. A. I will be glad to accept the official definition of the classification book, the definition that Mr. Wooster has here.

By the Court:

XQ505. The essential of it is a single thread, is it not? A. Yes, sir.

2616 By Mr. Morris:

XQ506. A single thread drawn through one loop after another. A. And across and across, or around and around, according to the method.

By the Court:

XQ507. That is the distinction that is made from weaving, which is a cross action having a great many threads? A. Yes, sir.

BY MR. MORRIS:

XQ508. Just come back to my primary question. A. All right.

XQ509. The public is free to employ anything disclosed by Pogson, so far as this case is concerned at least, is it not? A. To employ it for the old, known purposes.

XQ510. For repairing a run in a ladder it is at liberty to do so, is it not? A. I should think so, in the method disclosed by Pogson, or before his time, or before the Stephens patent. 2618

XQ511. And in that liberty of action by the public, has the public the right to move the needle anywhere, or is it confined to some particular angle laterally out of alignment in repairing the run, as shown by Pogson? A. Do you mean the angle in the plane of the paper? If so, I should say so, or as the Stephens patent is concerned, it is not.

XQ512. What is the zone of freedom to which the public is entitled in its use of the Pogson disclosure? A. If we take what is shown here they can not move that very far to the right or almost in the plane of the paper, because that will get you out of the line of the run if you do otherwise. It would be ineffective to move it only as shown in the paper here. There are certain things you must do other than this. You must move it up and down sufficiently so that you can do necessary fishing to get the necessary yarn. This diagram that is shown here would not permit that. It is incomplete to that extent. 2619

XQ513. Mr. Pogson shows a right line of reciprocation, does he not, in the operation of his needle? A. I would say no.

2620 *Frank W. Dahn. Called in Rebuttal. Cross.*

XQ514. Will you tell me with your protractor, the different angles of incidence or angle with the line of the run shown by Mr. Pogson in his drawings. A. So far as is shown in these drawings, the shank of the needle is in the same angular-position all the time, but you must do some fishing that is not shown.

By the Court:

XQ515. About 20 degrees from the middle line of the run; I measured it yesterday. Is that not
2621 correct? A. That is correct.

By Mr. Morris:

XQ516. Does the Stephens commercial method involve a right line reciprocation? A. Substantially.

XQ517. Is the disclosure of Pogson at least substantially like a right line reciprocation? A. In the utilization of a finger method it is impossible to have it on a right line reciprocation. The necessary fishing for the thread prevents that.

XQ518. I am not asking you about the finger
2622 method. I am asking you whether the disclosure of Pogson is any less than substantially like the commercial method of Stephens, a right line reciprocation? A. So far as the picture shows, the shank is always in the same line.

XQ519. I ask you again: Is the disclosure of Pogson any less, substantially, like the right line reciprocation as shown in the Stephens patent? A. I said that so far as the picture shows, the shank is always in the same line.

XQ520. Let's turn to the specific specifications themselves, and see whether you can find that. I have taken Pogson and Stephens and put them side by side, for convenience. You may use that or you may use the original. I can find no change in the direction of movement in the description or drawings from the time of the forward movement, as begun in Fig. 4, until it ends in Fig. 6. I find no change in the direction of the movement in Pogson from the beginning of the reverse movement at the end of the advancing movement until the end of the reverse movement. Can you? A. I do not be- 2624
lieve any reading of this will show any escapement from or difference in change of movement. There are little movements that are not shown in the specifications.

XQ521. I will admit that in the operation, the hand operation, it does not have to be mathematically or geometrically accurate as is done by machinery. A. The commercial method has a movement that is never mentioned in this record, and transverses the movement of the drawings.

A. (Continuing) Of course, the right line of travel of the fabric would make it necessary that the needle always move in a right line to get down 2625
the run. You will always have to move forward in the direction of the run.

XQ523. Will you tell me what you find in the disclosure of Mr. Stephens, that is not disclosed with equal clarity by Pogson, so far as the movement of the needle is concerned? You may refer to the parallel columns of Stephens and Pogson that I have put before you. A. As far as concerns the motion of the needle, it is always related to a line. If you will read these extracts without ref-

erence to anything else, I do not think there is any serious difference.

XQ524. There is no serious difference. A. I don't think so.

XQ525. By "serious" you mean substantial? A. Substantial.

XQ526. You still think that the Stephens method, as disclosed by the patent, is a punch method, not a method where the needle is substantially in the plane of the fabric? A. I certainly do. May I add on that other question as to the direction in
2627 which the needle is held as to a right line reciprocation having regard to the horizontal axis of the needle. I say that the Stephens needle is held at a considerable angle to the plane of the fabric.

XQ527. You told me that yesterday. You said that that was merely a figment of the imagination on your part. A. That is not a fact. I never said that.

BY THE COURT:

XQ528. You never said that as I recall, did you? A. No, sir.

2628 The Court: He did not say that. You asked him that question if it were a figment of the imagination and he said that it was not a figment of the imagination.

Mr. Morris: He said it was an impression.

The Witness: I did not intend to say that at all. I never said that, that I recall.

The Court: He said that due to the things that he observed, certain things in the patent, it indicated clearly to him that it was a three dimensional affair.

The Witness: If you are a banker and get a counterfeit bill, you get the impression immediately that it is a counterfeit bill and not a true one. That is the impression that a skilled person gets in things with which he is familiar. That is exactly the impression that a person skilled in this art gets in connection with the operation of these needles.

BY MR. MORRIS:

XQ529. Did you see the Stephens method in operation before you read the Pogson patent? A. Let me see. I will have to recall when this Pogson patent first came to my attention. 2630

XQ532. Go ahead. A. This patent first came to my attention after I saw Stephens in the Knitting Arts Exposition in Philadelphia. It came to my attention after I had seen the Stephens operation in Philadelphia.

XQ533. When did it come to your attention, exactly? Can you give us the date? A. I do not recall the date.

XQ534. Was it after you had seen the Stelos method demonstrated? A. Yes, I had seen the Stelos method demonstrated as I just said in Philadelphia, before I saw the Pogson patent. 2631

BY THE COURT:

XQ535. You are talking about the Pogson method? A. Yes, sir, the Pogson patent or method, if there is one disclosed there other than the finger method.

2632 *Frank W. Dahn. Called in Rebuttal. Cross.*

BY MR. MORRIS:

XQ537. Did you see the commercial method of Stelos before you saw the Stephens patent in suit, or did you see the Stephens patent in suit before you saw the Stelos patent? The Stephens patent is dated June 8, 1926, that is the reissue; the original was December 8, 1925. A. The chances are very good that I saw the Stephens patent long before I saw the commercial operation, but I would not swear to that. The reason I say that is because
2633 I am in that division of the Patent Office a great deal, and these matters that seem interesting and peculiar, are mentioned to me sometimes by people in the office, and sometimes by persons outside of the office.

XQ538. You had given it no serious consideration prior to seeing Stephens? A. Probably not.

XQ539. No more than a great many other patents that are passed under your notice? A. Not at all.

XQ540. As I understand you, the drawings of Stephens, 4, 5 and 6, show the fabric is stretched over something, do they not? A. Over a holder.

2634 XQ541. Now, will you turn to Pogson, and tell me whether it is equally true of Fig. 1 in Pogson? A. There is no disclosure of any holder in this.

XQ542. I did not ask you about the specification, Mr. Dahn, I asked you whether it is equally true of Fig. 1? A. In this case—nowhere in the patent —I see no reason to assume that this is stretched over a particular thing.

XQ543. Then what does it represent to you? A. What is stated, as the representation of a fabric, crude as it may be—

XQ544. You are speaking about Fig. 1 of Pogson, are you not? A. Yes.

XQ545. Well, that is stretched, is it not? A. I suppose so, but you can not tell that from the Fig. 1.

XQ546. You can not tell whether, in Fig. 1, it is stretched, by examining the rungs of the ladder?

BY THE COURT:

XQ547. In this one, you mean Fig. 1? A. Yes, I think it is stretched.

XQ548. I think it is fair to say it is stretched somehow; whether you call it stretched or not, it looks that way. A. It is illustrative of a stretched fabric, otherwise these yarns would be crooked, instead of straight. 2636

BY MR. MORRIS:

XQ549. I assume so. As I understand you, Figs. 4, 5 and 6 of the Stephens patent show that they are stretched over something, or the fabric there illustrated is stretched over something; is that equally true of Fig. 1 of the Pogson patent? A. I was speaking of Fig. 1; I haven't said anything about Figs. 4, 5 and 6. 2637

The Court: He asked you whether it indicated that that fabric was stretched over something.

The Witness: Yes.

XQ550. It is stretched over something? A. Yes. I was trying to give reasons for it. My own point of view is that it is stretched over something, but

whether they are stretched over a flat surface or not—

XQ551. Will you please answer my question? Will you read the question?

(XQ549 read.) A. Yes.

XQ552. Now, let us turn to whether or not in the Stephens patent it discloses the punch method of the Stelos Commercial process? You are familiar with the De Marr application, are you not? A. I have never seen it until a couple of days ago, and have not looked at it much since.

2639 XQ553. Let us turn to the second page of Stephens and see whether we can find in his disclosure of the method of operation referred to in line 83, page 2 of the patent, anything that will help us to determine as to what was in the mind of Mr. Stephens at the time he filed his application, whether it was in the plane of the fabric operation substantially as you have stated the finger method maybe or whether it was the punch method. Do you find anything in lines 85, page 2 to line 29 of page 3 that helps you to determine that one way or another? A. I certainly find things that are inconsistent with the idea of a finger method.

2640 XQ554. You find it inconsistent with the finger method? A. I say I find things in it which are inconsistent with the finger method.

XQ555. What do you find in the description that is inconsistent with the finger method? A. Well, for instance, in lines 102 to 104, the statement:

> "The latch in the meantime reaching for and grasping the thread *b* and forcing it into the magnetized hook, as shown in Fig. 5."

XQ556. We went over that yesterday, so I will not inquire about that any further; what else do

you find? A. And a description of the guard, which would be useful, so far as I can see, only in a punch method and would have a function of shielding the latch, as mentioned in line 119 only in such a method, that is to prevent the latch from being closed prematurely.

XQ557. Where would there be a difference in that respect between the Stelos commercial method and the Mexican finger method? A. Well, in the finger method the guard is useless or possibly worse than useless, because you do not need any guard to prevent the catching of the latch and closing prematurely, because it does not have a chance to get there. 2642

XQ558. Does it have less chance to get there than in the punch method? A. I say it did not have a chance to get there at all.

XQ559. It did not have any chance to get there. Suppose it is a fine gauge stocking and the needle has not stopped in the finger method instantly upon the end of the latch when fully opened, passing through the thread of the loop, but has passed beyond the first strand, beyond the loop, would the guard then have no function in such an instance? A. Then you would cast off the work. 2643

XQ560. You would cast off the work? A. It is not an effective thing.

XQ561. How would that cast off the work? A. What is this supposed to be (referring to mechanism submitted to the witness)?

XQ562. We will make a finger method. A. Over a thing which is not a finger device and you hold your needle in a position which is not used in a finger method? And a heavy yarn?

XQ563. Suppose we push that beyond, if there is a guard there, which holds that thread up, so

that it could not close the hook, would it not serve to prevent the thread in advance from closing the latch (Have we the large model of the Stelos)? A. With that means you have to devise a finger method different from any that I conceive.

The Witness: I will add to my previous answer, maybe you can devise a finger method in which a guard would have some use, although with the present model you would still have more trouble in stabbing into the yarn.

2645

By Mr. Morris:

XQ566. Depending upon the length of the guard, wouldn't it, somewhat? The length of the guard would have some bearing on it? A. It might; I can not say. It seems to me that that sharp pointed guard would split the yarn, at least there would be danger of splitting it.

XQ567. Then the length of the guard would have no bearing in this, but the length of the guard of Mr. Hartzell's had a distinct bearing? A. I don't believe I have said so. In things as elusive as those, you have to try those things out experimentally.

2646 I can not speculate on it.

XQ568. Will you tell me the significance of the statement of the sentence beginning line 30. page 3 of Stephens patent? A. I have not completed my previous answer.

XQ569. If you haven't, go ahead. A. I mean as to differences. Of course, that function of the latch reaching for the thread is mentioned again in line 20.

XQ570. That is the function of the latch? A. In the preferred form of the function it is.

XQ571. It is in the preferred form of the function? A. It is.

XQ572. Very well; I will come back to that a little later. Now, will you tell me some further reasons why you find the punch method so clearly and exactly disclosed in the Stephens patent and not by Pogson? A. You said down to line 20 or something—

XQ573. Anywhere; I am directing your attention particularly down to line 30 of page 3. A. I think those are the essential things.

XQ574. Now then, you observe the words "slid forward" in line 91, page 2? A. Yes. 2648

XQ575. Does that have any significance to you? Does that help make it clear to you that it is the punch method ~~or not~~? A. At least it does not hurt the situation any; I think it helps it.

XQ576. It helps to show that it is a punch method, does it not? A. I think so.

XQ577. And the word "pullback", also helps to disclose that it is the punch method, does it not, down in line 98? A. When I consider Fig. 4—that is what he is discussing there.

XQ578. When you see that illustrated in Fig. 4, the needle is in the plane of the paper? A. It is not illustrated in the plane of the paper or fabric, as I understand it. 2649

XQ579. The pull back helps you to understand that this is the punch method? A. This shows the forward movement—it is distinctly underneath the plane of the fabric there.

XQ580. It is shown as underneath the plane of the fabric? A. If it were not, the line *d* would be bending upwardly if the needle were lying down, as, for instance, on a drafting board.

XQ581. That is equally true of the line *g* in Pogson, Fig. 6 and Fig. 5? A. I don't think so.

XQ582. Why not? A. I will be glad to tell you if you give me a chance. Those drawings are so diagrammatically imperfect—the number is shown only by a slight curve—it seems to me he is not trying to show a picture of the situation, but just a diagrammatical motion picture of a part of the process.

XQ583. All right, if that is your answer, we will proceed. So "sliding forward" and "pulled back"
2651 are words that are more appropriate to the punch method than to the finger method, are they not and the plane of the fabric movement, aren't they? A. I would not say that except in connection with Fig. 4, as shown there.

XQ584. Do you consider the punch method any advance of any moment in the art over the operation in the plane of the fabric? A. I can not find language strong enough to express myself better, so I will simply say yes.

XQ585. If you were drawing a specification for such a method, would you not make it quite clear that you had a punch method instead of the old,
2652 as you call it, prior art finger method? A. I should certainly try to use the best language I could to express my invention.

XQ586. You would not copy the language from a finger method specification, would you? A. It is hard to say.

XQ587. If you were going to market that wonderful advance as you call it, would you not try to show it? A. Will you let me finish my previous answer?

XQ588. Yes, go ahead. A. It is hard to say, if I could not find better language to express the

thing, I might, if I were familiar with such a patent drawing, probably read it and get some idea of the language used.

XQ589. Then you would copy that language to indicate your own method, would you? A. I might, if I could not devise any better language of my own. I would try to describe it as well as possible.

XQ590. You would copy it as close to the finger method as you could, to mark your departure? A. I hardly think that. I did not say that.

XQ591. All right, let us go to line 30, page 3, 2654 of the Stephens patent:

> "The clearance afforded by the notch or recess 5 makes it possible to hold the needle down closer to the fabric";

what do you get out of that? A. Not very much.

XQ592. It indicates holding the fabric—I mean, it indicates holding the needle down closer to the fabric, as disclosed thereby, doesn't it? A. I am not sure that I understand your question.

XQ593. All right, I will put it this way: It indicates that it is desirable to hold that needle down close to the fabric, doesn't it? A. That ex- 2655 pression, however, does not mean a great deal to me. The thing that actually does, in my estimation, is that the loop, say *a* for instance has been under considerable tension as the latch went through and that notch is put on knitting needles ordinarily to relieve that tension somewhat to let the loop set it free to a certain extent, in order to expand.

XQ594. Fine, go ahead. A. Now, whether anything else happened here or not—

2656 *Frank W. Dahn. Called in Rebuttal. Cross.*

XQ595. Why do you suppose the patentee used the words, "makes it possible to hold the needle down closer to the fabric" if he was disclosing the punch method? A. I can tell you what he told me about it if you wish.

XQ596. I don't care what he told you about it; would that help you to define the punch method in this patent? A. Of course, that needle is—

XQ597. No, no. Does that language help you find a disclosure of the punch method in this patent? A. Well, I don't think so.

2657 XQ598. You don't? A. No.

XQ599. Does it tend to make uncertain at all as to whether the patentee had the punch method in mind? A. Oh, not at all.

XQ600. Is it at all inconsistent with the disclosure of the punch method? A. Inconsistent? No.

XQ601. Not at all? A. I do not see that it is.

XQ602. Not at all? A. I do not see that it is.

XQ603. Let us turn now to page 2, line 45:

> "A notch or recess 5, is formed in the needle, opposite the free end of the latch or bridge, when the latter is wide open, as viewed in Fig. 1, the purpose of which is to reduce the thick-
2658 ness at this particular point with the needle adapted more nearly to the thickness of thread or yarn and the size of the loop and more particularly for the purpose of reducing the required movement of the needle in the operation to an extent corresponding to the depth of the notch or recess."

Does that help you at all in ascertaining what the disclosed method of the Stephens patent is? A. I do not see where that is of any great help.

BY MR. MORRIS:

XQ601. It does not help at all, one way or the other, to disclose or cast a doubt upon the punch method? A. I do not see that it does.

XQ602. Let us turn now to line 12, page 3 of the Stephens patent; "The operator now lifts the needle carrying the loop *c* up over and around loop *a*, pushing the needle forward as in Fig. 4." A. I see that.

BY THE COURT:

2660

XQ603. Is that line 12, page 3? A. Yes, sir.

XQ604. What patent? A. Stephens patent.

Mr. Morris: Stephens patent, your Honor. I am now reading from line 12, page 3.

BY MR. MORRIS:

XQ605. Does that mean anything to you one way or the other? A. It seems rather apt language to describe what actually happens in this traversing of the movement of the needle that I have referred to a while ago. That is something that has not been referred to before that I know of. Draw the loop *c* up, that is an essential way of doing that, you have to move the needle forward in its travels, to that extent.

2661

XQ606. Does that clearly indicate the punch method? A. It carries the loop over and around loop *a* which now makes a stitch in the fabric.

BY THE COURT:

XQ607. *a* makes a stitch in the fabric? A. In Fig. 6.

BY MR. MORRIS:

XQ608. All right. A. This is in Fig. 6.

XQ609. What does that indicate? A. I do not think that is particularly indicative of anything. I do not think it is so particularly indicative of the hand method, but it is not at all inconsistent with it. I should say.

XQ610. Not at all inconsistent? A. No. It may not be particularly indicative. I can not see how that would apply to the finger movement. I am
2663 studying it. Just a moment and I will tell you exactly my opinion on it.

XQ611. Allright, go ahead. I want you to take all the time; and when you give us that particular thing I want it to be just your idea on it after reflection. A. That particular thing could probably apply to either method.

XQ612. Very clearly, could it not? A. It would seem so.

XQ613. If applied to the finger method, it would be helpful, and then if it were applied to the punch method, it would be helpful in making it a clear disclosure of the punch method? A. If I understand you correctly, yes. The intent of it is to be
2664 descriptive.

XQ614. The intent of this is to be descriptive of the finger method and as such it would be helpful to describe the punch method? A. Well, that would be non sequitur.

XQ615. Non sequitur? A. Yes, I think so.

XQ619. I will now read: "A notch or recess 5 is formed in the back of the needle opposite the free end of the guard or bridge when the latter is wide open, as viewed in Figs. 1 and 2, the purpose of which is to reduce the thickness at this particular point in the needle to adapt it more nearly to the

thickness of the thread or yarn, and the size of loop, and more particularly for the purpose of reducing the required movement of the needle in the operation to an extent corresponding to the depth of the notch or recess."

Do you find substantially similar language in Mr. Stephens' application at the point to which I directed your attention? A. In the patent.

XQ620. I direct your attention to line 87 of the Stephens application. A. Page 2?

XQ621. Page 2. A. Reissue patent.

XQ622. Of the reissue patent. A. All right, go ahead. 2666

XQ623. I am reading to you now from the next page of the DeMarr application, a one-half interest in which was assigned to Frank C. Stephens, as disclosed by the exhibit.

The deMarr application reads thus:

> "The operator first inserts the hook 1 through the last loop *a* of the ravel or run, and beneath the next thread *b*."

Do you find that to be substantially the same as in the Stephens patent? A. Yes.

XQ624. Does that correspond identically with the Stephens patent? A. I think so; it is a substantial correspondence. 2667

XQ625 (Continuing to read): "The needle is then slid forward until the loop *a* slides over the free end of the guard or bridge 4 as shown in Fig. 4." Is that substantially the same as Mr. Stephens' patent? A. It is substantially.

XQ626. Almost identical? A. Yes, almost identical.

XQ627. Will you now refer to lines 93, 94, 95 and 96, continue on down to the period in line

2668 *Frank W. Dahn. Called in Rebuttal. Cross.*

97. That seems to be not descriptive of the method, but simply explanatory.

I will continue to read from the DeMarr:

> "The needle is then pulled back in the reverse direction, the loop *a* sliding back against the guard or bridge and swinging it against the hook, as clearly viewed in Fig. 5, and the hook in the meantime picking up thread *b* as shown in said Fig. 5."

2669 I will now continue to disclose, to read the disclosure of DeMarr:

> "The operator now continues to pull the thread *b* which is held tight by the closing of the guard or bridge 4 against the hook until a loop *c* is formed in thread *b*, and it is drawn through the loop *a* as clearly illustrated in Fig. 6."

The Court: That is line 112?

XQ628. Is that substantially identical with the Stephens patent? A. Yes.

XQ629. I direct your attention to line 12, page
2670 3 of the Stephens patent; and I will read you from DeMarr:

> "The operator now lifts the needle carrying the loop *c* up over and around loop *a*, pushing the needle forward as in Fig. 3, through the loop *c*, until it opens the guard or bridge and swing it back, and the hook *l* is inserted beneath the next succeeding thread *b*."

Are you following me? A. Yes.

XQ630.

"After the loop *c* shall have slid over the end of the guard or bridge and beneath it (as shown in Fig. 4), the needle is reversed or pulled back, and the hook carries with it the thread *d* just as it has previously done with thread *b*, as shown in Figs. 4 and 5; and, as thread *d* is pulled back, and the loop is formed in it"—

Are you following me? A. Yes.

XQ631. 2672

"—and the loop is formed in it, the already-formed loop *c* slides against the guard or bridge, again closing it, and confining the thread *d* within the hook, thereupon a further pull forms a loop in thread *d* as has been described in connection with thread *b*, and this is pulled through loop *c*. Thus the operation is repeated until the run or ravel is repaired, after which the end is held down by a thread or stitch."

Is not that practically identical with the Stephens patent? A. It is practically identical. There is a little more difference, there, but there are many expressions which are similar. 2673

XQ632. Any disclosure of a different method in Stephens than that in DeMarr, which I have just read? A. If you look at the Stephens drawings and the DeMarr drawings, I think you will instantly find that there is a substantial difference. There is a large difference between the two when you take these in connection with the drawings.

2674 *Frank W. Dahn. Called in Rebuttal. Cross.*

XQ633. Let us take the next line, line 30 of the DeMarr patent. I will read from the DeMarr, next to the last paragraph in the specifications and prior to the claims:

> "The clearance afforded by the notch or recess 5 makes it possible to hold the needle down closer to the fabric, and greatly reduces the thickness of the combined needle and latch as well illustrated in Fig. 1, which is very desirable during the operation of knitting and repairing as it lessens the pull and tension
> 2675 upon the threads and the loop."

Is there not an absolute identity there with the Stephens method? A. I think so.

XQ634. All of that identical in these two specifications, that of Pogson, and that of Stephens, and yet from one you would gather from it to be an explanation of the punch method and the other an explanation of the finger method and the later one being an explanation by Stephens, in order clearly to disclose that Stephens had a radical difference or punch method; is that correct? A. The answer to that is, that when you go into an art that is
2676 perhaps a rather technical one, and you have a new thing that you have to patent, and you have to form an application that you have already worked out before, and to which you have devoted a great deal of time and put a great deal of trouble upon, you are very likely to keep that in mind and to take any language from it and put it into the other one which seems apt. I have done that often.

XQ635. That was for the purpose of disclosing a difference or a similarity? A. It is language that seems appropriate.

XQ636. No, no, no, no, no. You are keeping language now because you want to have it in the new one for what purpose, to disclose a similarity or to disclose a difference? A. To disclose similarity, so far as there may be similarity.

XQ637. Correct. A. Of course there is similarity, to a certain extent.

XQ638. Both dealing with knitting, are they not? A. No, reknitting or, as I prefer to say, run repairing.

XQ639. Run repairing is not knitting? A. Absolutely not.

2678

XQ640. Not at all? A. No.

XQ641. You said you would accept the definition as disclosed in the Official Classification, and I call your attention to the first clause under the heading "Textile Knitting." A. I might change my mind once again. I have done it before. This looks all right.

> "The manufacture of fabric structures from strands by forming loops and drawing the bights thereof through previously-formed loops."

2679

XQ642. Are you ready to go ahead? A. Yes.

XQ643. And you do not think that run repairing is knitting? A. No. It is simply reconstituting something that has already been in existence.

XQ644. And you did not have it to begin with? Before the repair is begun, you did not have a loop in the run, did you? A. You have the fabric there.

XQ645. You have the fabric, but it does not have the loop in the fabric, does it? A. It is a looped fabric with a defect in it.

2680 XQ646. Where are the loops in the run of Fig. 4 of Stephens? A. There are loops in the wale above and below the run. There are some, but there are none in the run itself, of course.

BY THE COURT:

XQ647. He asked you in the run. A. The run is a defect in the fabric.

BY MR. MORRIS:

2681 XQ648. The run is unlooped. It is unconcatenated, is it not, of that particular portion of the particular fabric, is it not? A. I think that is correct.

XQ649. Then is it not a reknitting to restore that portion, is that not a reknitting to restore the portion that has become unknitted? A. Reknitting would be different from knitting.

XQ650. A reknitting is a knitting a second time, is it not? A. It does not appeal that way to me. I do not like the term reknitting, because I do not believe it is proper. It is run repairing.

2682 BY THE COURT:

XQ651. If these loops are knit, I suppose you would reform them into the fabric that had been taken away at that point? A. You have a fabric there already. It is simply a question of repairing the defect in the fabric. In knitting per se there is no defect, because there is no fabric until it is made.

XQ652. How does the repair of hosiery differ from knitting? A. One is the production of new

material and the other is the replacement of a defect in an already made material.

XQ653. You say this is a repair of hosiery, do you? A. Yes, that is what this is, that is what it is commonly supposed to be.

XQ654. Will you tell me the difference between the operation of the needles in reknitting that run from the operation of any one of the needles in the Gearhart machine? A. I will try to. In reknitting the run you insert the instrument, an instrument of some kind, through preferably the last loop in the wale that has a run in it.

2684

XQ655. Yes. A. You grasp the rung of the ladder in the wale, just slide that on the loop and draw it up back over there through it.

XQ656. Not until you get your loop all the way up on the latch, do you, not until you get your latch all the way to the loop? A. You do not have to use a latch needle.

XQ657. We are dealing in this case with latch needles alone. A. Very well. Naturally, with the latch needle you would insert the needle through the last remaining loop in the direction in which the run is going in that wale in which the run occurs. I am talking now of a single wale run. And having opened the latch in some way or other, you will grasp the next rung of the ladder and draw it back.

2685

XQ658. How? A. Through the loop previously engaged so as to make a new loop and so continue.

In that operation the latch is closed by some means or other, so as to confine the rung and cause the loop to be swept over it.

XQ659. Go ahead. A. In the operation of the machine—

2686 *Frank W. Dahn. Called in Rebuttal. Cross.*

XQ660. (Interrupting.) I am speaking now not of all the needles in the machine, but just of one needle in the machine, of the operation of a needle, a single needle, latch needle, in the Gearhart machine. A. In the operation in the machine referred to any one needle, the needle itself would not go through any fabric, because there is no fabric to go through, there is no fabric on the machine above the needles, because the needles are producing the fabric. It simply extends to the last formed loop of a wale.

2687 XQ661. As did the needle in the repairing of a run? A. As the needle was inserted through the last remaining loop in the direction of the travel run in the wale.

XQ662. If this needle is a latch needle or pivoted latch needle, the latch would be completely above or below the loop; which way would it be? A. Well, if this needle is a latch needle, or a pivoted latch needle as you have just stated, the latch would be completely above the loop at this point. In some other kinds it might be below the loop.

XQ663. You mean above or through? A. I mean above, considering that there are latch needles on which the latch extends down almost to the loop

2688 end of the needle.

XQ664. In either case where you are using a latch needle, you have to punch the hook and latch of the needle and get it through the last loop of the wale, in seeking the object loop or thread? A. At least the operative end of the loop, or rather, the operative end of the latch is above or beyond that last loop of the wale.

XQ665. In each case they are through that last loop of the wale? A. That is not particularly accurate, because in this kind of latch needle, sliding needle, it never goes completely through.

XQ666. We are talking about pivoted latch needles. A. All right.

BY THE COURT:

XQ667. They are talking about pivoted latch needles only. A. All right.

BY MR. MORRIS:

XQ668. In each instance the hook and latch of the pivoted latch needles go through the last loop of the wale, do they not, in the operation? A. Yes, 2690
sir.

XQ669. For the purpose of bringing through that loop another thread to form another loop? A. That is correct, as far as it goes.

XQ670. That is clearly a knitting operation just the same in reknitting a run or raveling in a stocking as it is on a machine? A. So far as you have gone.

XQ671. You can go as far as you like. A. In repairing a run, you reach for a round of the ladder that is already there. In knitting it grows with each course and a new thread that is brought into play that has never been knitted is brought into 2691
juxtaposition to be brought into the new loop that is to be formed that has never existed before.

XQ672. In each instance they make a series of loops where no loops exist before? A. No, they existed in this case, but they did not exist in the other case.

XQ673. I am talking about where no loops exist. A. No loops exist on the machine.

XQ674. It is the interlacing of the yarn or thread in a series of connected loops to form the knitted product by the motion of a pivoted latch

needle? A. Yes, although that definition is not sufficiently limited.

XQ675. In each instance the function of the needle is to bring through the last loop of the wale another thread to form a new loop. A. I object to the word "new". In one case it is reconstituting a loop, and in the next case it is building a new loop.

XQ676. All right. If you want to call it that way, all right; I am satisfied. A. Go ahead.

XQ677. We have found many things in DeMarr
2693 that existed in Stephens, and you still think that Stephens makes a clear disclosure of the punch method? A. Within the four corners of the patent I certainly do. Unquestionably.

By the Court:

XQ678. If you will put in a cubicle of some kind with this patent, you could evolve the patent method from what you find in that patent? A. I think I would be able to. I think a person who knew much less about the art than I do could do that.

XQ679. You think a person who knew less about
2694 the art could do that? A. I certainly do.

By Mr. Morris:

XQ680. In the punch method, if there is one disclosed there, as you claim, you think to a man skilled in the art it would not require any invention to get it, you think in the disclosure of Stephens, a man skilled in the art would understand it immediately? A. Not perhaps immediately. He might have to experiment a little, and study a little.

XQ681. Then he might have to find out by experiment? A. I think he would find it quite definitely in the patent.

XQ682. Let us assume we are going to experiment with Pogson; what would you find there? Would you find the punch method there? A. No.

XQ683. Not at all? A. No.

XQ684. May claims be limited? A. They are usually limited.

XQ685. And how can claims be limited? A. By the prior art I suppose is what you want.

2696 The Court: Well, don't you tell what you think he wants; tell what you think is the fact.

The Witness: Yes, sir.

XQ686. May claims be limited by inclusion of specific devices in a claim? A. Certainly.

XQ687. Do you find any limitations in the claim in suit?

The Court: You mean claim 23?

Mr. Morris: Yes, sir.

XQ686. Answer the question. A. It would not 2697 be a claim if there were no limitations in it.

The Court: Now go ahead.

The Witness: Is there a question?

XQ687. Yes. Do you find any limitation in the claim in suit? A. I answered that question.

XQ688. You did not answer it the way I wanted you to. A. How do you want me to answer it? I said it would not be a claim if there were no limitations in it.

2698 *Frank W. Dahn. Called in Rebuttal. Cross.*

XQ689. I will put it this way. Will you point out some of the limitations in the claim in suit. May be I can help you to make it more specific by asking you a few questions. A. All right.

XQ690. Go ahead now, and we will get through with this very quickly. A. Very well.

XQ691. I will ask you this: Are the words "having a hook and pivoted latch", a limitation of the claim? A. Yes, they are a limitation of the claim.

XQ692. Are the words—I will continue to read from there until I find another group of words that
2699 I think constitute a limitation and then I will ask you about that.

> "Through a loop formed in the run or raveling, continuing this movement on through the fabric while holding the device laterally out of alignment."

Now do the words "laterally out of alignment" with the run constitute limitation in the claim? A. Yes.

XQ693. "With the run or raveling until the loop has slid back over the end of the latch"; does that constitute a limitation of the claim, "until the
2700 loop has slid back over the end of the latch"? A. Yes, sir.

XQ694. And continuing: "and beneath the latter"—does that constitute a limit of the claim? A. I said yes.

XQ697. Now I will read you this: "Then reversing the movement of the device through the loop"—I direct your attention to the following: "—catching the new forward thread in the hook while the loop is being pulled over the latch"; that last group of words, beginning "catching", does

that constitute a limitation of the claim? A. Yes, sir.

XQ698. "Causing the latch to close over the thread"; does that constitute a limitation of the claim? A. Yes, sir.

XQ699. What is the method of correcting erroneous limitations in the claim, by construction, or by reissue? A. Erroneous limitations?

XQ700. In the claim—yes, erroneous limitations in a claim. Suppose that there are limitations in this claim here, erroneous limitations, I am asking you what is the method of correcting erroneous limitations in a claim if they happen to be erroneous? A. If they are material, they may be corrected by reissue. 2702

XQ701. May they be corrected by construction? A. If they are immaterial, yes. They might be construed.

XQ702. You mean that a claim might be construed with regard to erroneous limitations? A. Cochrane vs. Deener is the answer to that question.

XQ703. Will you explain to me what you mean? A. I mean that a claim like that was construed in the case of Cochrane vs. Deener, and the Court disregarding the mechanical limitations and defining what the claim meant, as relating to the process. 2703

XQ704. Then the protection furnished by a patent is not measured by what is set forth in the claim; is that true? A. It is intended to be, certainly.

XQ705. Oh, it is intended to be; then the limitations may be ignored or may not be ignored, is that what you mean to convey? A. The Court is at liberty to construe a claim.

2704 *Frank W. Dahn. Called in Rebuttal. Cross.*

The Court: Of course, we all know that.

The Witness: Yes, it is in the discretion of the Court; it may be ignored or not ignored.

XQ706. To ignore a limitation in the claim? A. If it is immaterial, yes.

The Court: I wonder how long that discretion would stand, if you ignored a limitation in a claim.

Mr. Morris: Let me refer you to 155 U. S. 565; 155 U. S. 245; and similar other cases which I have here, which hold that a patentee is bound by the limitations in his claim.

2705

The Witness: How do you define a limitation?

XQ707. I am not defining it.

XQ708. There is one other question that I wanted to ask you, however. You were dealing in your examination with equivalents; may a claim include that which a patentee has disclaimed or distinguished from? A. Disclaimed or distinguished expressly?

XQ709. Yes. A. I do not see how it could.

2706 XQ711. Now then, I want to direct your attention to line 32 of page 1 of the reissue patent and all that it covers, I mean to refer to the first sentence in particular of that paragraph:

"With other needles used for a similar purpose, the latch or bridge must be forced open by pressing against the thread or fabric and, in operation, can be opened in no other way";

what do you understand to be the purpose of that statement in the specification? A. It is a lauda-

tory statement referring to his needle, which is something which is quite common in specifications.

The Court: I suppose it is somewhat in the nature of a selling argument.

The Witness: Yes, it is what you would call a selling argument.

XQ712. Not a misleading one; there is nothing untrue about that statement, is there? A. I suppose the inventor was trying to tell the truth, as he understood it.

XQ713. There was no attempt to distinguish by Stephens over needles so operated, was there, in order to get his patent? A. In this expression, do you mean? 2708

XQ714. Yes. A. I do not see any. This refers, I suppose, to the question of magnetism, by which his needle was operated.

XQ715. It did not refer to a needle like the Finch needle where a latch or bridge must be forced open by pressing against the thread or fabric, and in operation can be opened in no other way; it was not broad enough to include the Finch needle, was it, the sliding latch of the needle? A. I suppose he knew nothing about such needles; I don't know. 2709

The Witness: Will you read the question?

(XQ715 read.) A. If I am being asked what they intended to do by that, all I can answer is that I don't know.

XQ716. You are skilled and an expert in the law of patents and in obtaining patents, and the only purpose for which those statements are put in are to distinguish, are they not; between the ex-

isting art and the desired claims? A. I would not say that.

XQ717. What is it then? A. Oftentimes they put it in to express their views in such a way as to impress the Examiner with their great invention, or to bring out a particular point in it.

XQ718. By distinguishing it from the prior art, isn't it? A. Not always. I do not say that it is always so.

XQ719. Did not in your interpretation of this patent,—and I am asking you as a sworn expert,
2711 did you not distinguish the needle of the patent and its operation or mode of operation from sliding latched needles? A. Will you read that question, please?

(XQ719 read.) A. I can not answer that. I don't know whether they knew about sliding latched needles or not.

XQ720. I did not ask you whether they asked about sliding latched needles; I am asking whether Stephens did not there distinguish there between his pivoted latched needle and the needle functioning and which had the mode of operation there described? A. I do not understand that question.

2712 XQ721. He used that as an inducement to get his patent, did he not? A. Distinguished, in what way?

XQ722. Mode of operation? A. He describes specifically a mode of operation, if that will help you any

XQ723. As a patent expert, do you construe that to be an express classification of certain types of needles disclaimed by Stephens in his application? A. Why, no, I think not.

XQ724. Not at all? A. Well, if I may explain—this statement that you just made, is a statement

in regard to a certain advantage that his improved needle has over other types of needles, the old plain latched needle, but that is not claimed, as I understand it.

XQ725. That he was asking for a patent not only on what he discloses but on a method of operation of the old sliding latched needles? A. This sentence has nothing to do with the question of method themselves, they refer to some of these claims like 8, which refer to them.

XQ726. It does not at all apply to 23, does it? A. I do not see any serious connection in this statement and Claim 23. 2714

XQ727. Well, if there is nothing you want to add to that, we will pass on. A. In Claim 23, we are not limited to the use of magnetized needles or there would be a direct connection, but as it is, I do not see any.

XQ728. All right, let us pass to 43:

> "With other needles and their method of use, one thread holds the latch or bridge closed over the hook, and the thread to be looped must be forced into the hook while the latch is so closed."

2715

He was not attempting to distinguish there between any needles of the prior art, was he, and their method of use? A. I have always considered that that sentence referred to possible knowledge on the part of the attorney to the Ortega patent.

XQ729. All right, let us come back to the claim —I find in Claim 23, "an improved method of repairing runs or ravelings in a fabric which consists in stretching the fabric over a suitable holder." I pass to you Defendants' Exhibit BB, consisting of

two holders, and ask whether they or either of them constitutes a suitable holder? A. I think they are suitable without the use of these rings. I think they would render them somewhat unsuitable.

XQ730. Which one is the more suitable? A. The taller one.

XQ731. What do you understand by the term "suitable holder" as used in Claim 23? A. I should think a holder suited to the purpose of run repairing by the punch method, is a fair definition.

XQ733. Where do you go to find what such a
2717 suitable holder would be? A. Well, you would go to the specifications and your imagination, as to what would suit, and you could determine by experiment also.

XQ734. You may go wholly outside of the specifications to find that? A. To one skilled in the art, one does use his own knowledge and imagination.

XQ735. Then one skilled in the art could hold either one of the Graf holders which I pass to you, could he not? A. Without the ring, which as I understand, has an undesirable effect.

XQ737. Would the holding of this fabric over the holder by the ring or Graf throw the operation of
2718 Claim 23 outside of the scope of Claim 23? A. I am not so sure that it would, but the ring is a bad thing.

XQ738. With the use of the ring in the practice of the Stelos commercial method, it has been found that the hand manipulation is more desirable; is that your opinion? A. Oh, I think so, yes.

XQ739. Can infringement be avoided by the use of a less desirable manipulation? A. That would depend on the circumstances of the case.

XQ740. The only change I am making from the egg cup now is to substitute the device of Graf;

would that take the practice of the punch process as you claim 23 to be, outside of Claim 23? A. That is construing a claim. I can tell you what I understand to be the effect about the use of these things—

XQ741. You don't care to answer that? A. I don't know the answer.

XQ742. Suppose I were to use the hoops of DeMarr, the embroidery hoops, would that throw me outside of the scope of Claim 23, because I have not used an egg cup? A. I do not consider that a suitable holder.

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XQ743. You would not consider it what? A. I do not consider that a suitable holder, but whether that would throw it outside of the claim—

XQ744. What do you consider a suitable holder? A. I consider an egg cup a suitable holder.

XQ745. Do you consider, as a patent expert, that a porcelain dish is an adequate, full, concise and exact disclosure, when an egg cup is a suitable holder? A. Sufficiently full, and so forth, to inform those skilled in the art, to direct them towards the thing to use.

XQ746. And where would those skilled in the art, if this were a new method, have had any disclosure of the use of an egg cup? A. Well, the direction is a porcelain dish and that would allow free use of the needle or something like that, and certainly that is an instruction to use a porcelain dish that you can stretch a knitted fabric over.

2721

XQ747. You could also take one of those small butter dishes and do that, could you not? A. I should think so. I thought of that before, but not particularly well, because they are too shallow.

XQ748. All right, let us take a breakfast coffee cup, that is not too shallow, is it? A. It is too large around.

2722 *Frank W. Dahn. Called in Rebuttal. Cross.*

XQ749. All right, then what is the matter with a vegetable dish—a small vegetable dish? A. I do not think you could handle a fabric over that.

XQ750. It could not be stretched over that? A. It is not suitable for run repairing.

XQ751. All right, then what is the matter with a dinner plate? A. You are getting further and further away from suitable holders. These things are not inconceivable, but they are not practicable.

XQ752. They are not suitable holders? A. They are not practical.

2723 XQ753. Is there an adequate disclosure of a suitable holder in this patent at all? A. I think so, to one skilled in the art, it indicates what could be used.

XQ754. But no man, if this patent is what you contend it is, who had knowledge of using it other than the inventors, if your contentions are right, how would a porcelain dish direct one skilled in the art to repair a run, a three-dimensional run? A. It seems to me that would be simple. If you are repairing runs mostly in hosiery; I say mostly, not altogether; and you are directed to use a punch method with a hand needle in connection with a

2724 suitable holder.

XQ755. You think no man skilled in the art would have any trouble in doing it? A. No particular difficulty, I think.

XQ756. Let us take the Graf mechanism; you have a knitted fabric stretched over it and locked in place by a metal ring and you have it ready for hand repair, that is disclosed by Graf, is it not? A. Yes.

XQ757. All right, suppose you have a hole and run in that and you have before you the needle of Pogson or Walker and all the latched needles of the

prior art, would it require invention, after you had repaired the hole, to use the latched needle in the repair of a run, which is almost side by side with the hole in the stocking? A. By the punch method?

XQ759. Your needle having repaired the hole, has gone up and down there, would it require invention for the housewife to pick up her latched needle and use that stretched over the Graf, to repair the run which is side by side with the hole? A. These holes are not repaired with a latched needle.

XQ760. That is true, but they may be, however, may they not? A. Well, I suppose they could be; 2726
I don't know just how.

XQ761. Through one of these patents in suit it shows how it can be done, as I understand the patent—I thought it was brought up by someone here. A. I do not recall, maybe it can.

XQ762. It can be done by knitting around those loops, can they not? A. Do you mean with a sewing machine?

XQ763. Maybe I have in mind a sewing machine, but we won't go into that; but a man is at liberty to use the tools that are applicable to a particular work in hand, isn't he? A. Ordinarily.

XQ764. Mr. Stephens, the owner of one-half interest in the DeMarr application, which showed it 2727
was for repairing runs in stockings with the latched needle, must have had knowledge, must he not, of the use of the latched needle for repairing runs? A. Had knowledge of the use of the latched needles for repairing runs? Yes, from Mrs. DeMarr, I suppose he got it.

XQ765. Well, he had it, and we don't care where he secured it. A. All right.

XQ766. Then would it require invention with the fabric stretched over Graf for repairing, to use the

suitable tools known to the art for such repair? Even though it might have required two tools, one to repair a hole and the other to repair a run? A. I can agree that it would not be impossible to do it, but as for invention, it is hard to say.

XQ767. Since the use of latched needles for the repair of runs in hosiery was known, there was no escape from that, I take it, in view of the DeMarr situation? A. Oh, yes, Stelos admits it and I do too.

XQ768. Now, then, there had been then—the pub-
2729 lic was entitled then and in full possession of the right to use the latched needles for the repair of runs and it was fully known, in contemplation of law, that the latched needle was suitable for such purpose. Now then, in a latched needle, as available to a person who desires to repair a run in a stocking which is stretched over Graf it may be, if you please, move and repair a hole, in the ordinary sense, to be repaired by a needle; do you mean to tell me, in your opinion as an expert in the patent law, that it required invention for a person to use that thing as Pogson did, according to my interpretation and understanding of Pogson? A. Why,
2730 yes, it did require invention to use it with the punch method, in my estimation. Nobody ever suggested it before Stephens, in my estimation. I do not say it would not be within the capabilities of it to fish this in the fabric, but to go beyond that in the punch method, no.

XQ769. It would have been permissible for him to have used the needle when the fabric was stretched over a suitable holder—it would not have been permissible for him to use the latched needle, and in such use have gone under two runs in advance of the runs in which the needle was inserted, and not

go under the runs of the ladder in advance of the needle? A. Undoubtedly he would accidently do it if he got as far as that.

XQ770. He might do it accidentally and find that it worked? A. If he ever got as far as the idea of fishing at all, he would come upon two or three runs accidently.

XQ771. If Mr. Pogson happens to disclose that he got under those runs, would not the operator that I have referred to, be at liberty to use the Pogson manner of using the needle? A. Will you read that question?

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(XQ771 read.) A. If by that you mean that he could use this fishing method substantially in the plane of the fabric and accidently get under two or three, I would say yes.

XQ772. Mr. Dahn, I referred to the Pogson manner of using the needle, as I have disclosed to you my interpretation of Pogson so? A. In the punch method, then I would say no.

XQ773. Is not the Pogson method, whatever it was, open and free to the public? A. Certainly.

XQ774. And the public could not have used it and handled it in the manner disclosed by Pogson, whatever it was? A. The Pogson method is a finger method.

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XQ775. Let us assume for the moment that it was not a finger method in the sense of the Mexican method at all, would the operator have been free to use the Pogson manner of using the needle in whatever manner Pogson disclosed? A. Certainly.

XQ776. Then it would not have required invention to use it over the Graf holder, would it? A. I am not exactly clear on that. My recollection is, it seems to me a person skilled in the art might

very well have thought of the fishing method and have the fabric stretched over—

A. (Continued) To be a punch method.

XQ777. I do not care to define it as a punch method or not a punch method. I mean to say where Pogson discloses, if he goes under the threads in advance of the loop and not over any of them? A. Will you read that?

(XQ777 read.) A. It must be more definite than that. If you meant that as illustrated yesterday by the use of the harp, that is not the Pogson
2735 method, as I understand it.

XQ778. Any member of the public was free to use the Pogson method, whatever it was? A. They are free to use the Pogson method, yes.

XQ779. With the latched needle to repair a run, stretched over a Graf cup, was he not? A. Certainly. There is a doubt in my mind, because a man skilled in the art would probably have done that, but I am not going to decide that he could. He probably would have done it.

XQ780. Now, let us turn once again to equivalents as to modes of operation of the sliding latched needle, as compared to the pivoted latched needle.
2736 What do you understand by a machine in the patent law? A. When I was passing my examination in the patent office, I knew all about those definitions. I can give you a rough definition, if you wish.

XQ781. You said that the needles in suit were not machines but were articles of manufacture. How do you describe a machine—first, how do you distinguish one from another? A. Very roughly, I would say that a machine is a combination of elements which, when set in operation will act by a law of its own and will keep on doing a certain thing; an article of manufacture it almost anything that is not a machine. It is differentiated—

XQ782. Maybe I can save you some mental labor by asking you whether you would confirm the definitions I have here. A. If you will give me the authorities.

XQ783. Yes. "A machine is a combination of heterogeneous mechanical parts, adapted to receive energy and to apply it to the production of some energetic result or results; the term 'machine' includes every device by means of which energy can be utilized or a useful operation can be performed." 1 Wall, 531, Burr vs. Duryea.

"Manufacture is an instrument created by the 2738
exercise of mechanical forces and designed for the production of mechanical effects, but incapable, when set in motion, of attaining independently any predetermined result, since it lacks a *modus operandi* or rule of action of its own."

Johnson vs. Johnson, 60 Fed. Rep. 620;
Cincinnati Traction Co. vs. Pope, 210 Fed. 443.
International Mausoleum Co. vs. Sievert, 213 Fed. 225.

Do you accept those definitions as substantially cor- 2739
rect? A. I have no criticism to make of them offhand, no.

XQ784. What do you understand by mode of operation of a machine? A. The way it works.

XQ786. What is the mode of operation of a pivoted latched needle? A. It has not any, unless you move it.

XQ787. When it is functioning? A. By hand or machine? But the mode of operation when it is actuated by mechanism or by hand is to make loops of yarn.

2740 *Frank W. Dahn. Called in Rebuttal. Cross.*

The Court: That is what it does. You mean how it acts?

XQ788. I mean the mode of operation. A. Will you give me the question again?

(XQ787 read.)

XQ789. You may take this enlarged pivoted latched needle and tell me its mode of operation, if you will? A. Having formed a loop or other support above the shank of the needle, if you now supply a yarn to the hook and produce relative movement between the support and the needle in the rearward direction or toward the butt end of the needle, the end remote from the hook, the support encloses the latch and draws the new yarn through that support, whether it be a loop or something else, and makes a new loop in the yarn. Does that answer your question?

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XQ790. It does not. A. Then I don't know what you mean.

XQ791. Did you intentionally or inadvertently omit the operation of the latch itself, opening and closing in your definition or description of the *modus operandi*? A. I have not reached that, but I will go on from there. The new loop having been drawn and the previous loop or support having been cast off, the needle is then again moved relatively to the new loop, whereupon, if the latch has not been opened by other means, it will then be opened by the loop sliding back on the latch.

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XQ792. All right. A. Until it clears the end of the latch at some stage.

XQ793. And that is the *sine qua non* of the mode of operation of the pivoted latched needle, that is

the indispensable thing in the mode of operation of the pivoted latched needle that the thread of the loop must slide above—

The Court; Upon the pivoted latch?

XQ793 (Continuing)—upon the pivoted latch and onto the shank of the needle? A. It is essential that the latch be passed beyond the end.

XQ794. That is the only manner in which the pivoted latch in that can be made to operate, function, as a knitting device? A. That is the general purpose, yes. 2744

XQ795. You could not answer that by simply saying yes? A. No, I could not, because I know too much about knitting to answer that yes; you can do too many other things with it.

XQ796. As a pivoted latched needle? A. Yes.

XQ797. I will come back to my previous question; the one indispensable thing about the mode of operation or functioning of the pivoted latched needle in any operation is that the thread must slip up over the end of the open latch and upon the shank of the needle; is it not? A. In ordinary knitting operations, yes.

XQ798. Such as repair of runs and ravelings in stockings? A. Which are not ordinary knitting operations, yes. 2745

XQ799. Then it is not essential that that mode of operation be employed in a pivoted latched needle in the repair of runs, and so on? A. That feature also occurs in run repairing.

XQ800. That feature? A. What do you call it?

XQ801. The mode of operation? A. The mode of operation also occurs, yes.

2746 *Frank W. Dahn. Called in Rebuttal. Cross.*

XQ802. And is indispensable, is it not? A. Yes, if you are using it for knitting or mending runs or other functions that can be done with such a needle.

BY THE COURT:

XQ803. You would not have a pivoted latch on something that it would not serve any purpose for, would you? It would be in the way, would it not? A. It can do other things like mending that mat, crocheting, and other things.

2747

BY MR. MORRIS:

XQ804. In the mode of operation or functioning of the pivoted latched needle, when is the next forward thread caught in the hook? A. Whenever it gets into such position to be taken on the hook.

XQ805. You say it is caught there after the pivoted latched needle has been brought into complete contact with the hook by the sliding down of the loop that passed over the end of the open latch and beneath that latch? A. If I understand your question, the answer is no.

2748 XQ806. Claim 23 about which I want to know says:

> "And beneath the latter, then reversing the movement of the device through the loop, catching the next forward thread in the hook while the loop is being pulled over the latch, causing the latch to close over the thread, and the loop to be cast off over the end of the device."

Isn't that the normal, usual, ordinary and almost indispensable method of operation of the pivoted

latched needle? A. Essentially of course in knitting there isn't any next forward thread; there is a new thread being taken in and the position is not exactly as you define it, but essentially it is true, yes.

XQ807. Is it equally true of the sliding latch in the needle? A. The same sequence takes place.

BY THE COURT:

Q808. What catches the loop on the sliding latched needle? A. You are referring now to knitting machines? 2750

BY MR. MORRIS:

XQ809. I am referring to the Finch needle? A. The Finch needle where?

XQ810. Anywhere that is in operation by hand method, such as the Van Dyke machine of repairing runs, where the Finch needle is attached to the needle, as you have shown in— A. In run repair?

XQ811. Yes. A. If you amend that by saying run repairing, I will change the answer. The previous question was not directed to run repairing.

XQ812. If my questions are directed to run repairing will you say if you can hook that next thread while— A. If the previous question was directed to run repairing, I would have to change my answer. 2751

Mr. Morris: Read the question in regard to that.

(XQ806 read.) A. That is substantially what I understand takes place.

XQ813. Even in run repairing? A. I asked him to change the question to say it referred to run repairing.

XQ814. Now, I want you to refer to the slide latched needle on Exhibit NN, so as to catch the next forward thread in the hook of the sliding latched needle while the loop is being pulled over the latch; the needle is in the loop now and while a loop is being pulled over the latch? A. Are you referring to line 65 of Claim 23, "While the loop is being pulled over the latch"?

2753 XQ815. Right. A. I am not sure that I have operated a Finch needle; I don't know.

XQ816. When did the loop pass over the latch in that operation; does it begin to move over the latch until after the latch is closed or not? A. After the latch is closed does it begin to move over?

XQ817. Until after the latch is closed?

The Court: It is only closing of the latch against the hook to give you strength enough to go over the incline, I suppose?

The Witness: I should suppose so.

2754

RECESS.

FRANK W. DAHN, resumed:

CROSS EXAMINATION BY MR. MORRIS (Continued):

XQ818. What requirements are prescribed by the Stephens specifications for a suitable holder? A. Sufficient depth over the free end of the needle. That is the only one that comes to my mind.

XQ819. Is that the only restriction upon a suitable holder called for by claim 23, as you interpret it? A. I should think so.

XQ820. The form and size, and so forth, have nothing to do with a suitable holder as there called for? A. That is left to the judgment of the person skilled in the art.

XQ821. There are no requirements with respect to the form or size, or any other characteristic of a suitable holder set up in the description? A. No.

XQ822. Turning again to claim 23. Are the limitations therein functional or mechanical, the limitations that we referred to this morning? A. As 2756
I recall, all that you referred to were mechanical limitations, in a process claim. I am sure that is what they are; I am not sure that I remember just exactly the things that you referred to.

XQ823. I referred to the hook and latch, the hook and pivoted latch; what is that? A. That is mechanical.

XQ824. Laterally out of alignment with the run; what is that? A. That is not mechanical.

XQ825. Is that functional? A. It is descriptive. I would not call it functional.

XQ826. How many kinds of limitations are there that may be inserted in a claim or statement? 2757
A. I do not know just how many kinds. There are functional and mechanical limitations. There may be a descriptive statement that would not affect it one way or the other.

XQ827. "Catching the next forward thread in the hook while the loop is being pulled over the latch." Is that one of the steps of the process? A. Yes, sir, it is.

XQ828. That is the limitation? A. It would have that effect.

2758 *Frank W. Dahn. Called in Rebuttal. Cross.*

XQ829. Is that a functional limitation? A. Yes, sir.

XQ830. Are statements of function in a claim binding, or not? A. Statements of function in a method claim are usually in the nature of steps in the method.

XQ831. Are two methods considered the same in a patent if stated in the subject matter of one but not included in the subject matter of another? A. You mean entirely omitted?

XQ832. Yes, I mean entirely omitted in another.
2759 A. I should think ordinarily not.

XQ833. Why do you insert "ordinarily?" A. It is hard to answer every question yes or not. It is hard to do that without a qualification. I do not have every possible situation before me, of course. An essential step omitted means non-infringement.

Mr. Morris: That is all.

By Mr. Wooster:

XQ834. I understand Mr. Hodges to state in his opening, or in some discussion, that the words "pivoted" and "hook" in claim 23, were not func-
2760 tional or mechanical limitations in that claim; do you agree to that? A. The word "hook" and the word "pivoted?"

XQ835. I will also include the word "latch." They are not structural limitations on their claim, do you agree to that? A. I do not see that; I would not say that they are not structural.

XQ836. Are they structural limitations of the claim, was my question? A. Every word that has significance in a claim is a limitation.

XQ837. Then you say that this claim is limited to structure by the terms "hook" and "pivoted latch;" is that right? A. In terms, yes.

XQ838. Are they limitations to structure? A. It is a limitation in terms, yes.

XQ839. Are they limitations in structure? A. Certainly.

XQ840. Then they are not limitations of functions, are they; or is a function implied from the nature of the structural limitation? A. I hardly know how to answer that theoretical question.

XQ841. Pardon me, Mr. Dahn. That question is not theoretical. It is intensely practical to the reading of this claim 23, in suit. A. I think it is theoretical. 2762

BY THE COURT:

XQ842. Don't argue with him. Answer it in detail, and if you can not, say so. A. I do not feel that I can answer that in its form. I do not feel that I can answer it properly in the form in which it is put.

XQ843. As you read the Stephens patent, do you find a statement by him in it as to the functions which the pivoted latch described by him was to perform? A. Yes, I do. 2763

XQ844. Let me ask you if you do not agree that when he described his magnetism, as applied to a pivoted latch, he had in mind some form of latch which could be moved by magnetism? A. Certainly.

XQ845. And if he had a latch that could not be moved by magnetism, would that be what Mr. Stephens had in mind? A. For carrying on his process—

2764 *Frank W. Dahu. Called in Rebuttal. Cross.*

XQ846. When he wrote this patent? A. I certainly think he contemplated using a latch that was not magnetized, yes.

XQ847. Do you find that he said that anywhere? A. I don't believe he said that in the descriptive part of the specification.

XQ848. Did not Mr. Stephens also specify, as one of the functions of his pivoted latch, that it would fly open at the proper time, quoting from page 1, lines 33-34? A. A statement of that kind appears there, yes.

2765 XQ849. Please answer the question yes or no? A. I did say yes.

XQ851. Now will you answer the question yes or no? A. Yes.

XQ852. Now, by "fly open" did Mr. Stephens mean that the thread was to make it fly open or did he mean that his magnetism would make it fly open? A. Certainly magnetism.

XQ853. Not the thread? A. Not in describing this preferred form of the invention, no.

By Mr. Wooster:

XQ854. As I read the patent, Mr. Stephens gave
2766 still another function which he wanted his pivoted latch to perform, and he thought enough of it to mention it four times in the patent; once at line 44, page 1, where he says:

> "The latch reaches for and grasps the thread to be looped, forces it into the hook and the latch is then tightly closed by the loop already on the handle;"

the same statement at line 41, page 2; line 20, page 3; and line 103, page 2; where a man mentions the

same thing four times, it is important to him, isn't it? A. It might not be.

XQ855. Do you agree that that was one of the things that Mr. Stephens, when he wrote his patent, wanted that latch to do? A. I would not say that is what he wanted it to do; that is what it did.

XQ856. Didn't he say it did it? A. Exactly; that is one of the characteristics of the latch, as used in this process, this type of latch, this old latch.

XQ857. In your judgment, was that characteristic old or new with Mr. Stephens? A. It is new in this punch method. The latch, as far as physical conformation was concerned, is old, but because of its length, it had this characteristic, this operation, when used in this method. 2768

XQ858. Did you not say in direct examination that the long latch would perform that function and the short one would not? A. A long latch will operate in that way on a fine fabric and if the latch is short enough and the fabric is not too fine, it will not.

XQ859. Will you not answer the question, without qualifying it to fine fabric, because Mr. Stephens covers the range from any kind of a fabric, such as fine stockings to much coarser fabrics, such as sweaters? A. It is simply a question of relativity; I can not answer it yes or no. 2769

XQ860. Do I understand you to say that function of casting the thread is not an inherent function of a pivoted latch? A. Casting a thread? Is that the word you used?

XQ861. Casting the thread into the hook, is not an inherent function of a pivoted latch? A. In repairing a run?

XQ862. Do you say it is an inherent function of a pivoted latch in repairing a run? A. It is.

XQ863. Will you just answer yes or no, is it or is it not? A. What do you mean by an inherent function? It is a characteristic of the operation that takes place.

XQ864. Is it an inherent characteristic? A. Under the conditions prescribed, of course it happens because the dimensions of the parts—I take that to be inherent.

XQ865. Where do you go to the Stephens patent to get the dimensions of the parts? A. There is no specification in dimensions in his patent, as I
2771 recall.

XQ866. Are you now trying to read some dimensions into the patent? A. Not at all.

XQ867. Then why can you not answer the question as to whether or not that casting of the thread function is a characteristic of the pivoted latch described in the Stephens patent—is it or is it not an inherent characteristic of pivoted latches in general? A. Limiting it to characteristics, I think it is inherent in such needles as shown here and described.

XQ868. Described where, in the Stephens patent? A. Yes, with a fabric of suitable character.

XQ869. And you still say if the latch is made
2772 short, it may not do that? A. If this were used with a coarse fabric, it might not do it. That is an ordinary latched needle, as I understand it to be.

XQ870. Does Mr. Stephens explain that in the patent? A. I do not believe that is explained in the patent, no.

XQ871. And you get that from the patent as one skilled in the art? A. I evolved that myself, that such would be the case, and then Mr. Stephens produced a needle and showed it to me and it was

that way. I did not know that before I saw him about the matter. I thought about it myself and I discovered in my own mind that that would be the proper way, very properly.

XQ872. And that needle that he produced did not do the same thing that he says four times in the patent that he wanted his latch to do; is that correct? A. I do not know that he wanted it to do that.

XQ873. He did not do that? A. No, sir.

XQ874. He did not do it or did do it? A. That needle did not do that, no, sir.

XQ875. That was the short latch needle? A. 2774
That was the short latch needle.

XQ876. Can you tell us where and when one changes into the other? A. That would be dependent upon several things, upon the relative coarseness of the fabric and the length of the latch proportioned to the needle. I can not give you the dimensions, no. It would vary with the various statements. It would not be the same in one needle as it would be in the other needle. These things vary according to the coarseness of the fabric and the length of the latch, and the size of the needle. It would be impossible to give one dimension that would fit all of these, because it would vary with 2775
the various needles. For instance, if you had a very coarse thread and a very fine needle, it would be one thing. On the other hand, if you had a very sheer fabric and you had a very coarse needle, then you would be faced with an entirely different set of facts.

XQ877. In your opinion, does the Finch needle function in that way? A. It does not.

XQ878. You say that the Finch needle does not function in that way? A. No, sir, it doesn't func-

tion in that particular way. It is not a pivoted latch needle. It is a sliding latch needle.

XQ879. Does it cast or throw the thread into the hook? A. It does not have a pivoted latch.

XQ880. From that does it follow that the Finch needle is the equivalent as you consider equivalent, of a short latch needle or not an equivalent of a long latch needle, pivoted long latch needle? A. It does not follow.

XQ881. Will you explain that answer. It does not seem to me to be clear. A. My view of the mat-
2777 ter is: In the art we have a lot of various self-acting needles known in the art for a long time, on which patents have been granted long, long ago. Many of those needles, if not all of them, at one time or another, had a patent on it.

XQ882. Go ahead. A. Having once been taught to repair a run by the punch method, then any one of these self-acting needles could be used, it would be obvious to a person skilled in the art that the others would probably function to do the same thing in substantially the same way. May be not in exactly the same way, but it is quite obvious that they would do it in very nearly or substantially the
2778 same way. The particular difference in the self-acting needle, that is the slight mechanical differences that might exist, might produce a very slightly different result, but the ultimate result would be the same. There is no particular difference between one of the operations by the sliding latch needle and the operation by a pivoted latch needle, except that small difference which may be accounted for by the fact that they operate in a slightly different manner.

However, the punch method is exactly the same in both needles. They are both self-acting needles,

and the operation would be the same. There would be no substantial difference.

XQ883. By that do you mean that the short pivoted latch needle in which the latch does not force the thread into the hook, is the equivalent of a long pivoted latch needle in which the latch does force the thread into the hook? A. It would seem to be fairly obvious that such a needle would be the equivalent. Yes. I would say that it would be the equivalent of it. The difference that you mention there is not a substantial difference. It is not a difference in function at all. It is simply a slight 2780
difference occasioned by the mechanical difference in the two needles, and it would not make much difference one way or the other.

BY THE COURT:

XQ884. I thought you just said that they were not equivalent. A. I do not think I did say that they were not equivalent. Your Honor, I thought my answer meant to say that they were substantially equivalent. If I did say that, I will now correct it.

XQ885. I thought when you were asked in regard to the Finch needle, and the fact that it did not grasp the loop and put it into the latch, push the 2781
loop into the latch, that you stated that neither did the short latch needle do the same thing. I thought you stated that neither the short latch needle or the Finch needle in that they did not do that were not the same. He asked you at that time if they were not equivalent, and it is my understanding that at that time you told him that they were not equivalent. A. I did not understand his question to be that way. If I answered that way, it was because I did not understand the question properly. I will say now that they are equivalent.

XQ886. Answering that now you say that they are equivalent, or not? A. I do not mean that they were not equivalent for that reason. What I meant to say in that case was that they did not have the same characteristics in the very fine distinctions only, but they do have the common characteristics as to all the broad methods of operation. In those conditions they operate substantially the same, but they do not do it in exactly the same manner. They do it very substantially the same, and they do the same work, and get the same result.

2783 XQ887. Would you say that they are or are not equivalent? A. I say that they are equivalent, substantially equivalent. To a person skilled in the art, it would be merely a question of selecting one or the other needles, self-acting needles, to do this work.

By Mr. Wooster:

XQ888. By that do you mean that the latch which does throw the thread into the hook is the full equivalent of one which does not and can not throw the thread into the hook? A. No. I mean it is the substantial equivalent of that.

2784 XQ889. Do you mean that it is a substantial equivalent of that? A. Yes, sir.

XQ890. Is that a qualification or a reservation by you when you use the word "substantial" in connection with equivalent, when you say "substantial equivalent" instead of saying "equivalent" alone, do you mean that to be a qualification or a reservation of your statement? A. It is not always possible to answer a question yes or no. That can not be answered yes or no properly. There are some questions that can not be answered yes or no; this

is one such question. There is such a thing as an equivalent, and there is such a thing as a substantial equivalent. This happens to be a substantial equivalent. I consider them to be substantial equivalents. I consider both of these needles to be substantially equivalent to one another.

BY THE COURT:

XQ891. You mean the one with the long latch and the one with the short latch? A. Yes, sir, and whether a pivoted latch needle or a sliding latch needle would be the same thing. 2786

XQ892. And whether they would throw the thread into the hook or not? A. Precisely. It is a matter of intelligent selection of the known instrumentalities to carry out this method.

XQ893. The Finch needle was not known at the time Mr. Stephens wrote this patent, was it? A. No.

XQ894. It is clear from that that Mr. Stephens could not have had the Finch needle in his mind? A. The specific needle of the Finch patent was unknown. The sliding latch needle or self-acting needle was known and had been long known to the art. It was a needle that was known in the art for 2787 many, many years before that time.

XQ895. Did you not hear that Mr. Stephens did not know about that? Did you not hear Mr. Stephens say that the only latch needles that he knew of at the time he wrote this patent were the DeMarr needle, and that he had seen the Pogson publication and the Walker British patent alone? A. Possibly; I do not remember whether he said that or not. I was here when he was giving his testimony, but I was not paying particular at-

tention to it at the time. He may or may not have said that.

XQ896. Do you remember Mr. Stephens mentioning the long sliding latch needle as known to him before he filed his patent application? A. I do not remember.

XQ897. Has it happened in your experience that where an inventor intended to cover diverse structures such as a pivoted latch needle and a sliding latch needle, that he would have mentioned both of them in his patent? A. He might or might not.

2789 In my experience I have found them to do it both ways. Very commonly, needles are not shown in detail, at all. They frequently do not show them at all; they do not show the ends of them. They frequently merely show the shank of the needle, and nothing else.

XQ898. Do you agree that Van Dyke did that very thing? A. Showed both, yes.

XQ899. He showed both of the needles in his application for a patent? A. Yes, sir, he did.

XQ900. And that it was the intention by Van Dyke to not exclude either type of needle from being used in his machine? A. Certainly I would interpret that from a reading of his patent, because he

2790 showed both of them in his patent.

XQ901. That is very clear, is it not? A. It is shown very clearly in the patent.

XQ902. Do you find any statement by Stephens in his patent, that he could use modifications of the pivoted latch needle which he described? A. I do not believe so.

XQ903. Is it not a common clause in patents, for an inventor to state at the end "Modifications and changes may be made without departing from the scope of my invention"? A. Yes.

XQ904. Nothing like that is in here by Mr. Stephens, is it? A. No, it is not in there by Mr. Stephens. He did not put it in there.

XQ905. During youn direct examination on the stand here yesterday and the day before, as well as today, I do not think you have said whether you agree or disagree with the statements made by Stephens in this specification. Do you agree with him, or do you care to state, now, any statements he makes with which you do not agree? A. I have never considered that phase of the matter. I can look it over, and I will be glad to tell you, after I 2792
have read it over, whether I do or do not.

XQ907. Will you go ahead. A. I would like to look over the record and see what I can find.

XQ908. Go ahead and look it over. I want you to examine it carefully, and give us your idea about it. A. Very well, I will do so. (Whereupon, the witness took the Stephens patent and examined it).

XQ909. All right, go ahead and look through it carefully and state what you find. A. I am doing that now.

XQ910. Are you ready now? A. Yes. I have glanced through this sufficiently, I think. I have only glanced through the specification somewhat hurriedly, however, and while I should question 2793
the strict accuracy of some of these statements, I find nothing that causes me to suspect Mr. Stephens' veracity.

XQ911. The question did not ask you to pass upon the veracity of Mr. Stephens. I asked you to state now if you found anything in the Stephens specifications, or in his patent, as a whole, with which you do not agree? A. I don't believe I understand your question clearly; please state it again.

2794 *Frank W. Dahn. Called in Rebuttal. Cross.*

XQ912. It was simply to state whether or not you agree with the statements he makes in his specifications. A. I do not agree with all of them.

XQ913. Will you say the ones you do not agree with, just give us the ones with which you do not agree. A. The statements on the first page as to other needles should be somewhat qualified in the light of later knowledge.

XQ914. Give the lines. A. We will take the lines 24 to 28 on page 1:

2795 "With other needles used for a similar purpose, the latch or bridge must be forced open by pressing against the thread or fabric and, in operation, can be opened in no other way."

XQ915. How about line 5 on page 1, reading: "• • • they are not practical, as the method of"—A. I think line 5 is correct. Using the word "practical" in the meaning of commercial practice. That is a relative expression of impracticability, because in the finger method it would require such close observation that it would be hard on the eyes and the patience of the operator. It would not be practical from a commercial standpoint, and that is the way
2796 I interpret that to mean. That is the ordinary, common interpretation of the word "practical."

XQ916. Now in line 23 and line 25, on page 1, Mr. Stephens says: "It is impractical to use other needles with my method." Do you agree with that statement? A. Yes, in the sense that "impractical" means that it was not a commercial method. He is referring now to a commercial method, and it has to be interpreted in that light.

XQ917. Just answer yes or no. Do you agree with the statement made by Mr. Stephens, without qualification? A. Yes, sir, I do.

XQ918. How do you bring the Finch patent needle into the patent in suit if you agree with the

statement made by Mr. Stephens in lines 21 to 23, page 1? A. That statement necessarily would mean what Mr. Stephens knew, the extent of his knowledge at the time he made the statement.

XQ919. You limit that statement only to the two or three needles that he admits personal knowledge of, is that right? A. Yes, sir.

XQ920. That means that it was impossible to use the Pogson needle with his method, is that right? A. No. It does not say "impossible"; it says "impractical."

XQ921. Impractical? A. Yes, sir. By that he would mean slow and expensive, and not practical, from a commercial standpoint. 2798

XQ922. Do you include in this statement the DeMarr, Pogson and Walker needles? A. Yes. Not impossible, but troublesome, slow and expensive, relatively.

XQ923. Impractical to use the DeMarr, the Pogson and the Walker needles, with Mr. Stephens' method? A. I take the word "impractical" to mean and to convey the idea non-commercial, it was not practical to do it in competition with Mr. Stephens' needle. My answer would be yes.

XQ924. Mr. Stephens did not have any commercial business at the time he wrote "not practical" in line 5, and "impractical" in line 22? How could he have had in his mind then what you saw, for example, at the show in 1927? A. Well, of course, I have no way of determining what was in Mr. Stephens' mind. I can only say that he knew at that time what this method was going to be worth. It was faster and better than any other method that had ever been brought out up to that time, and he had reason to believe that it would be worth while. I would say that the idea has been 2799

well borne out by the subsequent events. They have proved him to be entirely correct.

XQ925. Do you think that he expresses his idea in this patent in suit? Do you? A. I think he intended to, yes.

BY THE COURT:

XQ926. Intended to, yes. Now the question is, did he express it? A. Yes, he did so express it.

XQ927. He did? A. Yes, sir.

2801 BY MR. WOOSTER:

XQ928. Do you think that this patent in suit fully expresses all that he knew about his invention at the time he filed it? A. Will you read the question? (Question read.) A. (Continuing.) Well, of course I don't know what he knew. My answer, however, would be yes. Perhaps not in the best words, but he did express it. Perhaps not even in the best way, but sufficiently to inform those skilled in the art.

XQ929. In your experience as an examiner of patent applications, did you find that the Patent
2802 Office was liberal to inventors in allowing any additional illustrations that the inventor had, disclosing something in his text but had not put it in his drawings? A. I would not say liberal, fair.

XQ930. Fair. A. Fair. If it was fully explained, it could be illustrated by the illustrations, otherwise he could not.

XQ931. Could not. A. No; that would apply to new matter.

XQ932. Will you tell us what "new matter" is in the Patent Office practice? A. It is some addi-

tional information, some addition to the invention. Such addition not being disclosed in the description or claims as filed, or in the drawings, if any. That is a rough definition.

XQ933. It is not permissible to insert new matter in an application once filed, is it? A. No, sir; it is not permissible to insert new matter in an application once you have filed it.

XQ934. When that situation arose with an inventor, he has the right to file another application that discloses everything, has he not? A. Yes, sir.

XQ936. That statement I just made is correct, is it not? A. It is substantially correct. 2804

XQ937. Is it not a fact that at any time after Mr. Stephens filed this application, he had the right to file a continuing or substitute application, and show in it the egg cup or the angle of incidence of the needle to the goods, and tell about the different kinds of stretches he wanted to, and everything else? A. At any time before the application matured into a patent.

XQ938. At any time before the application matured into a patent he had that right? A. Yes, sir, he did.

XQ939. On his re-issue application, it had to be based on the same disclosure that he had in his original application? A. Yes, sir. 2805

XQ940. And he could not put new matter into the re-issue application? A. No, sir, he could not put new matter into the reissue application that was not contained in the original application.

XQ941. Is not the re-issue statute a remedial statute intended to give the inventor the benefit of everything that original discloses, but that somehow or other he failed to claim? A. Yes, sir, that is correct.

2806 *Frank W. Dahn. Called in Rebuttal. Cross.*

BY THE COURT:

XQ942. This re-issue is to modify the old claim? A. Yes, sir.

Mr. Wooster: To modify the old claim to cover what by inadvertence, accident and mistake, and without deceptive or fraudulent intent, he failed to claim. Briefly, to correct the errors in the original patent.

The Court: I see.

2807 The Witness: That is about right.

BY MR. WOOSTER:

XQ943. Then Mr. Stephens, as I understand the situation, had ample opportunity before he issued the original patent, to have disclosed and claimed the egg cup, the different kind of stretches and the angle of incidence to the plane of the goods, if he wanted to? A. Yes, sir.

XQ944. Is that right? A. Yes, sir, that is correct.

BY THE COURT:

2808

XQ945. On a substitute or continuing application? A. Yes, sir.

XQ946. On the substitute or continuing part of the application also? A. Yes, sir; he could claim that later, if he desired to.

BY MR. WOOSTER:

XQ947. Mr. Dahn, I desire now to call your attention to the patent issued to Dunn, et al., No. 1793225, issued under date of February 17th, 1931,

to Dunn, et al., and to the plaintiff corporation here, which I believe Mr. Hodges and Mr. Gilligan referred to the other day, and ask you if that patent in Figs. 15 and 16 does not show all of this egg cup and angle of incidence and left-hand around the side of the egg cup which is not in this Stephens patent in suit? A. I would like to look over it.

XQ948. There is a beautiful picture of everything they want to put in the Stephens patent, is there not? A. The method is shown here as to the egg cup.

2810

The Court: What is that?

Mr. Wooster: It is a patent method of mending.

The Witness: Yes, your Honor, it is a patent method of mending. I heard of it, and I have a copy of it, but I have not had the time to look it over, yet. I intended to do that the other day but I was not able to do so.

The Court: That is last February. You mean to say it has been granted?

The Witness: This was intended to tie up the terminal threads at the end of a run. It does not have anything to do with hosiery repair, as such, as I understand it. 2811

By Mr. Wooster:

XQ949. The point I wanted to make is that when the inventor has a conception of an egg cup and the angle of incidence and the left hand holding the cup and the right hand holding the needle, the patent draftsmen know how to draw it, do they not, when they are told to do so? A. Yes.

2812 *Frank W. Dahn. Called in Rebuttal. Cross.*

The Court: Of course anybody could do that. I will modify that a bit. Many people could do it. I could not do it myself.

The Witness: Yes, that would be true; they could do it.

XQ950. So far as you know. A. I would like to glance over it before I state anything further.

XQ951. Did you know of the egg cup and the method of holding, as shown in Figs. 15 and 16 of this patent, prior to the filing date of the patent,
2813 March 17, 1929? A. Yes, sir, I did.

By the Court:

XQ952. What is the patent you are talking about now?

Mr. Wooster: This is the patent granted to Dunn, et al., No. 1793225.

The Court: What is the date of it?

Mr. Wooster: March 17, 1929.

A. It is March 17th, 1929, Dunn patent.

2814 By Mr. Wooster:

XQ954. Describe what you saw at the time of the Stelos Exhibition in Philadelphia, in 1927? A. You mean?

XQ955. Do you recall what you saw at the time of the Stelos Exhibition in Philadelphia, in 1927. A. What I said on direct examination?

XQ956. Yes. Do you recall the full description of what you saw? A. Probably not. I can tell you roughly.

XQ957. Well, no more than what you said on direct examination. In your direct answer you said that there was a booth, and you were within a couple of feet of it, and it was going very fast, and they held the needle like a pencil. Do you recall any more than that? A. No, not so very much more in the way of details. It was in the Commercial Museum, and it was at the end, near the door. I did go over there and watch it frequently.

XQ958. You were there watching it generally among a great many other things? A. That happened to be very close to an exhibit for a party whom I was interested in as a client. It was an exhibit by a client of mine, and I was watching it, of course, particularly. His booth was very near to that, and of course I watched that also, very much. I went over there and looked at it several times. 2816

XQ959. Had you at that time been retained by the plaintiff? A. No. I had not been retained by the Stelos Company at that time.

XQ960. Do you remember when you were called in as one of the experts in this case, by the plaintiff in this suit here? Do you remember whether it was after this reissue patent in suit, or before, or just when it was that you were called into the matter? A. I guess it would be perhaps two or three months before the Finch suit in Washington. 2817

BY THE COURT:

XQ961. Is that the only other case you testified in? A. I testified in the Gearhart case, but that was later.

2818 *Frank W. Dahn. Called in Rebuttal. Cross.*

By Mr. Wooster:

XQ962. By the time you were retained by plaintiff, a few months before the Finch trial, which was in January, 1929? A. I don't remember.

XQ963. About January, 1929? A. Yes.

XQ964. That was when you first understood all about this Stelos commercial method? A. That was when I first paid any real, serious attention either to the patent or the commercial methods, yes.

XQ965. When you made a real, serious study of
2819 the patent and file wrapper? A. I spent a couple of days on it, probably.

XQ966. In your experience as an Examiner in the Patent Office, is not considerable weight given to the claims which an inventor files with his original application? A. Yes.

XQ967. Will you take up the original method claim, as filed, and I will ask you if ordinary experience does not show that what a man originally starts to claim as a method is fairly indicative of what he thought he had invented at the time? A. Yes, I should think so.

XQ968. And in this case, we have the fact that Mr. Stephens not only knew of the DeMarr appli-
2820 cation with two method claims in it, but he also knew of the Pogson publication with one or more method claims in it; is that right? A. Yes, certainly.

XQ969. Will you take original claim 10 of Plaintiff's Exhibit No. 33, reading as follows:

> "A method of needlework which consists in stretching a fabric over a suitable holder, and inserting a needle having a magnetized curved hook, a magnetized curve latch or bridge and a

beveled side guard through the loop of the run or raveling, grasping the adjacent thread with the latch, forcing it into the hook, pulling the thread through the loop, grasping the next thread, forcing it into the hook and pulling it through the loop formed, etc. until the run or raveling is repaired."

And state what words you find therein which define the broad punch method without magnetism to open the latch and without the side guard, which I understood you to say is now within the scope of Claim 23? A. Will you read the question, please? 2822

(XQ969 read.) A. I do not find any direct statement of that punch method which specifies stretching the fabric over a suitable holder and then manipulating the needle, which perhaps connotes a punch method but does not say so directly.

XQ970. Now, will you look at the original method claims 3 and 4 of the DeMarr application, Defendants' Exhibit RR, and give me the word or words which, in your opinion, exclude the punch method from the scope thereof?

Mr. Wooster: In the meanwhile, I offer 2823 printed copy of Dunn, et al., 1,793,225, dated February 17, 1931, filed March 27, 1929, as Defendants' Exhibit TT.

(Marked Defendants' Exhibit TT.)

The Witness: Will you read the question?

(XQ970 read.) A. Claim 3 seems to be broad enough to cover both the punch method and the finger method. Claim 4 is more limited and it has what looks like some erroneous language in it, so I do not understand that claim.

2824 *Frank W. Dahn. Called in Rebuttal. Cross.*

BY THE COURT:

XQ971. DeMarr Claim 4 you say has inaccuracies in it? A. Yes, sir, it has inaccuracies in it so I do not understand it clearly. Aside from that Claim 4 also appears to be a broad claim such as would fit and probably cover both methods.

BY MR. WOOSTER:

XQ972. Is it not a fact that in original Claim 10 of Stephens the expression "laterally of the run" 2825 does not appear? A. It does not.

XQ973. It is also a fact that "laterally of the run" does not appear in the descriptive text of Stephens patent in suit, is it not? A. My recollection is that it does not.

The Court: It does not appear in the specification.

The Witness: It does not appear in the descriptive part of the specifications.

XQ974. In the absence of such description in the specification is it permissible, according to your 2826 understanding, to look to the drawings to see what is meant? A. Certainly.

XQ975. It is not permissible to go outside of the drawing, is it? I mean outside of the patent as a whole. A. For words of specific definition or special meaning, it is not; for general meaning, of course it is.

XQ976. How do you classify this expression, "laterally of the run"? A. The expression consists of a number of words of common meaning. The whole expression should probably have been defined in the specification, but it was not.

XQ977. If you go to the drawings to see what "laterally of the run" means, you find that it means one angle in Fig. 4; another angle in Fig. 5 and another angle in Fig. 6, do you not? A. May I modify that answer by saying you are entitled to go to the prior art, especially to the cited art to see what the patentee or his attorney was attempting to distinguish from, in ascertaining the meaning of language in claims also?

XQ978. Where does that get you?

The Court: In this case you mean? 2828

Mr. Wooster: In this case.

A. That gets us that in this application, there was cited Pogson, possibly one or two other references, Walker—only those, and they were certainly entitled to go to those to see what was attempted to be distinguished from when this claim was amended or changed.

XQ980. In answering that question consider that while Walker was not cited against Stephens, it was cited against De Marr together with Pogson and that both were known to the attorney who invented or conceived this expression "laterally of the run". 2829

The Witness: May I see a copy of Walker?

XQ980. (Continued) Walker No. 19,115 of 1903 (handing to the witness). A. It looks so; I suppose he went directly through the canvas.

XQ981. And you agree that laterally of the run has to have some meaning which will not cover Pogson, do you not? A. Yes.

2830 *Frank W. Dahn. Called in Rebuttal. Cross.*

XQ982. And then you agree that you have to get the meaning by finding what the difference was between the showings of Stephens and Pogson, do you not? A. I think that is one of the first things I said in my direct examination.

XQ983. When you do get to Stephens, you find that he had one angle laterally of the run in Fig. 4 and another angle laterally of the run in Fig. 5 and still another angle laterally of the run in Fig. 6, do you not? A. Yes.

XQ984. I believe you said that was all a drafts-
2831 man did, who shifted the needle around, so as to make it look clear; is that true? A. In accordance with the brief description of the drawings, where he said he was trying to show the stitches and loops.

XQ985. If Pogson could show his without bringing his needle around, why do you think Stephens had to shift his needle around to show the loops?

The Witness: May I have that question?

(XQ985 read.) A. Well, Pogson is more of a diagrammatical or moving picture view, whereas
2832 Stephens is more of a pictorial representation. If I may have that question again, please?

(XQ985 read.) A. I think that answers it. Also Pogson states in his brief description of drawings that what he is illustrating is method and not the particular form of stitches, as Stephens does.

XQ986. Is there anything in the Stephens file wrapper which says that those varying angles shown by Stephens do not mean anything? A. I am quite sure not.

Mr. Wooster: That is all.

REDIRECT EXAMINATION BY MR. HODGES:

RDQ987. Do you consider that defendant uses a suitable holder? A. Yes.

RDQ988. Would you regard a holder such as shown in the Graf patent in which the fabric is clamped down tight around the tube a suitable holder under the terms of the claim in suit? A. I think not, on account of the clamping of the fabric, there is a natural tendency to contract it as the loops are replaced, and that is liable to be confusing to the operator and might cause breakage of 2834
the yarn—that fabric being in tightly stretched condition, as I understand your question.

RDQ989. Is the word "stretching" in the sentence, "stretching the fabric over a suitable holder" expressive of a part of a method? A. Yes, I think it is intended to mean a definite thing, a plastic condition, at least for want of a more expressive term.

RDQ990. Do you consider that the method claim satisfies the feature of the latch reaching out and forcing the thread into the hook? A. It does not.

RDQ991. I think you were asked a question as to whether you consider the fabric in Fig. 1 of 2835
Pogson stretched or lax or limp, I might say; will you look at the cross threads representing the run and state whether or not they appear to be straight? A. No, they do not.

RDQ992. They are slightly curved, are they not? A. Most of them seem to be so.

RDQ993. Would that indicate anything as to stretching? A. Yes, it indicates something; I should think it indicates perhaps stretched over the finger or some curved surface. I do not see what else it could mean.

2836 *Frank W. Dahn. Called in Rebuttal. Redirect.*

RDQ994. I think there may have been some confusion as to the reference of the word "guard" as applied to the DeMarr disclosure, and I will ask you if there is any element in the DeMarr disclosure corresponding to the Stephens guard 6? A. No.

RDQ995. Is there any such element in the Pogson disclosure? A. No.

RDQ996. In the description of the DeMarr devices, you find the word "guard" used, do you not? A. I find it in the claims; I do not know as I read the description.

2837 RDQ997. To make it short—no, you better answer the question? A. I find it in the original claims of the application.

RDQ998. If you will just refer to the element 4 and state what that is? A. The element 4 in the drawings is a latch, a pivoted latch.

RDQ999. Do you find any other name for it? A. Page 3, line 11, states:

"4, is a guard or bridge."

Again in line 15, there is a reference to a guard or bridge.

2838 By the Court:

Q1000. Can we not all agree that that is the same as the pivoted latch? A. I think so.

By Mr. Hodges:

RDQ1001. Calling your attention to the notch 5 in the Stephens patent and also in the DeMarr application, do you note any difference in the location of the two? A. Yes, in the Stephens patent

the notch 5 is at the front side of the needle or the shank of the needle, meaning the side where the opening of the hook is found, and in the DeMarr application that notch is at the back.

RDQ1002. So that in Stephens, it presents a smooth runner surface at the rear or lower edge against the forming fabric, does it not? A. Yes, running against the forward edge of the reconstituted web.

RDQ1003. Would that have a tendency to make it run smoother? A. Oh, yes. The notch in DeMarr would bump over the yarns and tend to fray the 2840
delicate silk yarns, which are, after all, in question with these devices; it also would interfere with the pumping action, anyway.

RDQ1004. In the manufacture of knitted goods in a machine, would you say the thread being operated upon and made into loops is looped or formed around the needle by a continuous motion? A. Well, that is not a bad description.

RDQ1005. And the work is across the edge? A. The work is arranged at one side of the needles and the accession of the fabric, the increase in length, is taking place at the most recently formed edge of the fabric—the fabric is born at the needles, that 2841
is what the needles knit in succession about the crossing or rows according to whether the machines are circular or straight. That refers to machine knitting only, of course.

RDQ1006. Then in making something or repairing something you are dealing with a different set of conditions? A. Quite radically different conditions to my mind.

RDQ1007. And what as to results? A. In one case you are making or manufacturing a new fabric that has never existed before; in the other case you

2842 *Frank W. Dahn. Called in Rebuttal. Redirect.*

are reconstituting or repairing a defective portion of a fabric which may or may not be as good as new.

BY THE COURT:

Q1008. The one is healing and the other is a creative process, and the healing process, in order to be a successful one, has to go on the back path of the creative process, that is about what it really means in words, doesn't it? A. Yes.

2843 RDQ1010. In looking over the contents of the file wrapper of the Stephens patent in suit, did you find anything therein, wherein there was any patent cited such as the Pogson patent, that really necessitated the use of the word "pivoted"? A. There are several references. I have not considered them recently. Perhaps I should look at them before answering. Can you give me the numbers?

BY MR. HODGES:

RDQ1012. This one here is Bickford. That is the first one. A. What is the Bickford number, please? What is the number of that patent?

2844 RDQ1013. The Bickford patent No. is 132,382. Do you have that? A. I do not have it.

RDQ1014. What one do you have? A. I have Egby.

RDQ1015. What is the number of that? Is that No. 956318? A. Yes, that is 956318. It is the Egby patent. I have that.

RDQ1016. Now, how about the Jones? A. What is the number of the Jones?

RDQ1017. Jones Patent No. 386636. A. What is that?

RDQ1018. Jones 386636. A. I do not have that.

RDQ1019. Now, here is the Hartig, German to Hartig. A. What is the number?

RDQ1020. German to Hartig, No. 106861. A. Just a moment.

RDQ1021. Have you got that? A. I will look and see.

RDQ1022. Have you got it? Can you find it? A. I do not have it here.

RDQ1023. Have you got Egby? A. Yes, I have Egby.

RDQ1024. Is it there in your papers? A. Yes, I 2846
have it here.

RDQ1025. Here is Jones, 386636. I hand that to you and you can keep it there among your papers. A. I will put it here; this is Jones 386636.

RDQ1026. Here is Hartig No. 106861. You had better put that over there, so you can look at it too when you look over the other ones. A. Hartig, 106861. I just wanted to check it here.

BY THE COURT:

RDQ1027. What is that last one? A. Hartig, German. A patent to Hartig, on the mending device.

2847

The Court: I see. Go ahead.

RDQ1028. Is that all that you want? A. I think so.

RDQ1029. Then you have Jones, Egby and Hartig? A. Yes, sir.

BY MR. HODGES:

RDQ1030. And here is Bickford; that makes the rest of them. A. All right. Now, what is the question?

RDQ1031. In looking over the contents of the file wrapper of the Stephens patent in suit, did you find any patents cited such as the Pogson patent, or any other patent, that really necessitated the use of the word "pivoted?" A. No. All of those patents show pivoted latches. There was no need to have that word in there to designate that.

RDQ1032. Patent specifications and drawings are passed upon by the examiner and, through his tests are they regarded as a sufficient disclosure of the invention? A. That is a question that is
2849 always raised in the examination of the application. I should say yes.

RDQ1033. Will they suffer any departure being made during the prosecution of the case from its original disclosure, according to the rule? A. No, they will not. They will not permit any departure from the rule.

RDQ1034. Is that regarded as a rigid test in the Patent Office? A. Yes, the question of new matter is a serious question.

RDQ1035. Was there anything that would justify or necessitate the filing of a continuation case such as Mr. Wooster suggested in the Stephens application? A. I do not think it was necessary.
2850 There was nothing that would justify the filing of such a case in that particular application.

RDQ1036. Do you consider that any new matter was incorporated in the application from the filing date? A. I would have to look it up.

BY THE COURT:

RDQ1037. Have you looked at the filing date, and also on the file wrapper so as to tell? A. I have not looked into it; recently. From my recollection, I would say no.

RDQ1038. Suppose you look into it now before you answer any further. A. All right. (Witness then inspects the file wrapper.)

BY MR. HODGES:

RDQ1039. Are you ready to answer now? A. Yes.

RDQ1040. Go ahead. A. The only changes I see in the specification and drawing, outside of certain changes of claims or contentions of claims such as are usual, are the usual every day practice in the Patent Office—are one or two corrections of 2852
what appear to be clerical errors, the cancellation of a paragraph on page 8; this paragraph did not involve new matters; the rewriting of the paragraph, or part of the paragraph on page 9.

BY THE COURT:

RDQ1041. Can't I tell that as well as anyone else by inspecting it? A. Yes, I was just stating them.

BY MR. HODGES:

2853

RDQ1042. Would you say that the requirements in a patent specification are in any wise comparable to the specifications prepared by an engineer or architect, as to accuracy, and necessity for extreme detail? A. No. The proportions are not necessary at all; the description is only such as a person skilled in the art, would be able to tell. It does not have any particular requirement as to terms, and so forth. It is sufficient that it be enough to disclose the invention to those skilled in the art. The exact specifications and wording such as are

required in engineer's and architects' specifications and drawings, are not necessary here.

RDQ1043. Is there any suggestion in the patent to Graf, of the process in the claimant's suit? A. What is the number?

RDQ1044. Graf. A. What is the number? Do I have it?

RDQ1045. You have it. Will you look at it and state that? A. Yes, I have.

RDQ1046. Is there? A. No, there is not.

RDQ1047. There is no suggestion of the disclosure of the process? A. No, there is not a sug-
2855 gestion of the disclosure of the process in that Graf patent.

RDQ1048. Does the law require illustrating in an application, every conceivable form that it might take? A. Certainly not. It has never required illustrating in the application for a patent, the myriad of different forms that it might take. This is especially true of such things as needles that have been known in the prior art for many years.

RDQ1049. Would you presuppose that either an inventor or his attorney, if he had any skill or knowledge, would steer right into the Pogson or DeMarr invention when he knew of them and had
2856 them before him? A. No, he would not want to make trouble for himself purposely.

RDQ1050. Do you think that the Patent Office would allow him to get by with it if he tried? A. Certainly not; they would stop him in a minute.

RDQ1051. Is not that the province of the Patent Office to strain out those things? A. Yes, it is the province of the Patent Office to see that inventions are properly described and the claims are limited to the patent of a novelty only, a new and useful invention not heretofore disclosed.

RDQ1052. Will you state whether or not the drawings of the DeMarr application, distinguish from the drawings and disclosure of the Stephens patent, the method used? A. Yes. The drawings of the DeMarr application I should say call for a clear disclosure of the surface methods. They make that disclosure. They do not go through the plane of the fabric any more than is necessary in fishing for a—

The Court: For the object to be seized.

A. (Continuing) For the object to be seized, for 2858
the object rung, the needle is turned over more in a vertical plane than I think it usually is. It would not be worked that way.

RDQ1053. In your demonstration during the cross examination by Judge Morris yesterday, you were restricted, were you not, to loops suspended in an embroidery frame? A. Yes, he told me exactly what to do, and I did it.

The Court: Hereinbefore called the harp?

RDQ1054. Yes. That is what we have been calling a harp around here. A. Yes, sir.

RDQ1055. And he directed you to do certain 2859
things? A. Yes, sir.

RDQ1056. And you found there were two motions? A. There were two motions clearly disclosed in the alleged Pogson method as he wanted it performed. I do not consider that demonstration to have been a demonstration of the Pogson method. It was not a demonstration of the Pogson method, as I understand it.

RDQ1057. In the directions given you, you were working under and through the plane of the fabric? A. Yes.

2860 *Frank W. Dahn. Called in Rebuttal. Redirect.*

RDQ1058. And you followed instructions? A. I did. I did just what he told me to do.

RDQ1059. And in so doing, do you know what method you were working? A. I do.

RDQ1060. Was that the Pogson method? A. No.

RDQ1061. I will ask you in so doing what method, as a matter of fact, were you working? A. The Stephens punch method through the fabric. I was not using the Pogson method.

RDQ1062. So that according to your understanding, that did not disclose the Pogson method? A.
2861 Absolutely not.

RDQ1063. Do you regard the Pogson disclosure as such a full clear, exact, concise and complete disclosure as would make it perfectly clear to one skilled in the art in every detail? A. I do not.

RDQ1064. Do you answer that in the light of the new certified copy of the Pogson patent, which was just offered two or three days ago by the defendants in this case? A. Yes.

RDQ1065. Does that change it or not? A. It does not seriously change the situation.

RDQ1066. What do you mean by "not seriously change the situation?" A. I say it does not seriously change the situation, because it would still be
2862 the same method whether you had that or not. In the first drawings that I inspected on this, it was clear even more so that it was not the Stephens method. I think there has been a change in these drawings. The figure is obviously incorrect. Assuming that it be correct, even then it would not seriously change the situation. It would still not be the Stephens method.

RDQ1067. You state that with or without reservation. A. Absolutely without any qualification or reservation, it is not the Stephens method.

RDQ1068. Is that Fig. 6 described in detail, as to the method? A. It is not. The one where that change occurs is Fig. 6, and it is not described in the specification as to the detail of the method.

RDQ1069. Suppose we assume that this new drawing is correct, in every respect; what is your answer on that? A. As I said before, it would not change the situation. The Pogson method or disclosure is not the Stephens method or disclosure.

BY THE COURT:

RDQ1070. You have heard the question. Now, 2864
what do you think about that? Is that the way you intended to answer it? A. It means that a part of it is something like this here, part of the lines have been interpolated. They are not all the same.

BY MR. GILLIGAN:

RDQ1071. He asked you if they corresponded identically with the Stephens. A. Well, yes, as to a certain line here they are similar, but with a lot of the material which is interpolated in here, it would not be the same. Possibly some of it is word 2865
for word. A great deal of it is not. Some of the matter is, some of it is not.

Mr. Gilligan: The record ought to be right. If he did not mean that it ought not to have him as saying it.

The Court: Read it again. Have you got it there?

Mr. Gilligan: Yes, sir, it is "XQ627". Will you now refer to lines 93, 94, 95 and 96, continue on down to the period in line 97. That

2866 *Frank W. Dahn. Called in Rebuttal. Redirect.*

seems to be not descriptive of the method, but simply explanatory.

"I will continue to read from the DeMarr:

"'The needle is then pulled back in the reverse direction, the loop *a* sliding back against the guard or bridge and swinging it against the hook, as clearly viewed in Fig. 5, and the hook in the meantime picking up thread *b* as shown in said Fig. 5.'"

When Judge Morris got to that point, he paused for a moment and then he said: "I
2867 will not continue to disclose"—and he picked up the paper and looked in it and when he had found another citation that he wanted he said "to read the disclosure of DeMarr."

Then he went ahead and read this other quotation to the witness, and I thought that the witness, since there had been quite a lapse of time between that quotation and this last one, where he said "The operator now continues to pull the thread *b* which is held tight by the closing of the guard or bridge 4 against the hook, until a loop *c* is formed in thread *b*, and it is drawn through the loop *a* as clearly illustrated in Fig. 6."

2868

The Court: Yes, there is where he went over to line 112. He had to change the sheet and go over there.

Mr. Gilligan: Yes, your Honor commented on it at the time, the record says, "The Court: That is line 112?" "Mr. Morris: It makes an explanatory statement in there, which I have omitted."

Now it is my opinion that the witness thought he would have reference to this last

one only, because the next question that he asked was:

"XQ628. Is that substantially identical with the Stephens patent?" You will notice he is using the singular there, and does not ask if both of the quotations are the same, but simply asks if this one is the same, and I want to inquire if the witness's answer, which was "A. Yes" is what the witness meant to apply to the first quotation from the abandoned DeMarr application.

BY MR. GILLIGAN: 2870

RDQ1072. Did your answer intend to include that first paragraph? It seems to me that the first paragraph is quite different from the Stephens patent, and that is the reason I am putting this question. However, if it is your opinion that it was the same, will you so state. A. There is a lot of matter in here that does not correspond to the Stephens patent. Certain parts of it correspond quite closely. Certain parts of it vary considerably. Taken in connection with the drawings, the variation is marked. They then show the finger method. In the Stephens it shows the punch method. 2871

Mr. Wooster: The defendants respectively move for leave to amend the answers of the two Motor-Mend corporations to include the DeMarr Mexican patent and the DeMarr abandoned United States application in its bill of particulars and in the pleadings, as anticipatory to the claim in suit.

Mr. Hodges: Objection to the abandoned application, but not to the Mexican patent.

2872

The Court: I will reserve decision on that question, but I will let you put in the Mexican patent.

DeMarr Mexican patent and translation thereof offered and marked as Defendants' Exhibit U U.

Certified copies of Semonsen applications filed June 27, 1923, for Patents Nos. 1,536,274 and 1,536,275 offered and marked as Defendants' Exhibits VV and WW.

Copy of Stephens application Serial No. 177,462 filed March 22, 1927, offered and marked as Defendants' Exhibit XX.

2873

Certified copy of file wrapper and contents of interference No. 55,151, Stephens vs. Howe offered and marked as Defendants' Exhibit YY.

Certified file wrappers of abandoned applications of Pogson, Ortega and Slack involved in Pogson v. Ortega v. Slack interference offered and marked as Defendants' Exhibit ZZ.

Copies of U. S. Patent to Jones, No. 386636, of July 24, 1888, and German Patent to Hartig No. 106861, dated Dec. 19, 1899, with translation offered and marked as Defendants' Exhibits AAA and BBB respectively.

2874

Copy of Howe patent No. 1620550 offered and marked in evidence as Plaintiff's Exhibit 46.

Appendix.

2875

Evidence offered but excluded by Trial Court.

Group of advertisements identified by witness Crosby offered as Plaintiff's Exhibit No. 30.

Mr. Stancliffe: Objected to as hearsay and not properly shown.

The Court: Instead of admitting that as Plaintiff's Exhibit 30, I will let you offer it and it will be marked for identification, and I will reserve my opinion on that.

2876

Certified copy of abandoned application of John Wall Pogson filed in the United States Patent Office, December 22, 1921, Serial No. 524,226 offered in evidence as Plaintiff's Exhibit.

The Court: Well, you will have to get the original. I cannot accept this in evidence. It is too vague.

(Exception noted).

Printed copy of Pogson British Specification (1st Ed.) No. 168,817 offered in evidence as Plaintiff's Exhibit No. 45.

2877

The Court: I don't think that this has the slightest value. I don't see any reason why you should put this in. Strike it out.

(Exception noted).

2878 **Stipulation.**

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

THE STELOS COMPANY, INC.,
Plaintiff,

vs.

HOSIERY MOTOR-MEND CORPORATION, KAYSER HOSIERY MOTOR-MEND CORPORATION, JULIUS KAYSER & COMPANY, a Corporation,
2879 Defendants.

In Equity No. 48-16

It is hereby stipulated and agreed that the foregoing is a correct copy of the condensed trial record with testimony stated in narrative form as agreed upon by the parties.

V. E. HODGES,
Counsel for The Stelos Company, Inc.

J. S. WOOSTER,
Counsel for Hosiery Motor-Mend Corp.
2880 and Kayser Hosiery Motor-Mend Corp.

HARDY STANCLIFFE & HARDY,
Counsel for Julius Kayser & Co.

Dated, December 11, 1933.

On above stipulation within record is ordered filed.

WOOLSEY,
U. S. D. J.